NIAGARA IN POLITICS

JAMES MAVOR

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A Critical Account of the Ontario Hydro-Electric Commission

BY

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NIAGARA IN POLITICS

INTRODUCTION

THE scale upon which the Hydro-Electric Commission of Ontario has conducted its experiment in the operation of public utilities and the propaganda with which that Commission has accompanied its proceedings have attracted wide attention in the United States as well as in Canada.

It is obvious that no general rule can be applied to projects of operation of public utilities by political bodies. Sometimes such operation may succeed and sometimes it is bound to fail in securing public advantage. There have been few cases in which there were not observable some elements of success in this respect as well as of failure.

In the discussion of the question, "public ownership" has been quite unwarrantably confused with "governmental operation of industrial enterprises." These categories are not merely separable; they are in reality fundamentally distinct. The right of eminent domain or the universal right in the public over property is embodied explicitly or implicitly in the legal code of every civilized country. The right inheres in any government to expropriate pri-

vate property, the public possession of which is regarded by the government as necessary in the public interest. There does not appear to be any legal limitation to the exercise of this right. During the war the right was exercised by every belligerent country to an extent previously unknown to modern custom. Lands, forests, plantations, oil wells, railways, telegraphs, cables, telephones, steamships and large numbers of industrial enterprises, hotels, and private residences, were taken over by the belligerent States. After the conclusion of peace, these properties were returned to their owners in all countries but one—the solitary exception being Russia, where private enterprises taken over by the Government during the war were not returned and where all other enterprises, large and small, were expropriated without compensation. The consequences of this policy were the ruin not merely of private enterprise, but the ruin of the nation. It is obvious from this example that although there are no limits to the right of eminent domain, the exercise of that right without serious injury to the public interest is limited in practice. *Public ownership,* in the strict sense, therefore needs neither propaganda nor argument.

Apart altogether from possession, there is the category of operation. In the case of no country is the right of operation and monopoly of industrial enterprises a universally recognized right such as the right of eminent domain. Operation of the

property of the State by State functionaries may or may not be administratively possible or politically or economically advantageous or expedient. Thus the State forests or mines may be exploited by persons directly employed by the Government on wage or salary terms or the Government may find that the method of sale or lease for exploitation by means of private enterprise is more advantageous in the public interest. In countries where there is slender accumulation of industrial and financial capital, the Government may be compelled to undertake the exploitation of the State minerals and forests; but in those countries where there is an important accumulation of capital or where the stability of political and social organization induces credit, it has been customary to adopt the method of sale or lease, usually with reservations as to governmental control of the exploitation. This control has been provided for in all countries from time out of mind by means of Laws of the Forest, Laws of the Mine, etc. In the Middle Ages, before the growth of capital had reached any great dimensions, the exploitation of natural resources was in general undertaken by Governments. The distinctive characteristic of modern times has been the growth under private enterprise of capital, the economical utilization of it, and by consequence the wide diffusion of capital irrespective of national boundaries and in western Europe and North America, practically irrespective of social class.

Thus for a modern Government to embark in the operation of industry in a developed country is not only unnecessary but so far from being an indication of progressiveness, is an indication of reversion to long abandoned and even archaic practice.

The clamor for what is wrongly called "public ownership" thus arises from lack of knowledge of the historic past and from confusion of thought regarding the character and function of the modern State. The idea that any private individual can hold property adversely to the State is as great an illusion as that his holding of property is an injury to the public. If we regard the category of the State as comprising the total of the organs of government, we may regard the nation as comprising the total of the inhabitants of the national area. These inhabitants constitute the public and the preservation and security of their collective and individual property constitute the reason for the Government of the State as well as the function of that Government. In order that the Government may exercise its function, the people of democratic nations endow their Governments with political power. When the Government is so endowed, its members become the ministers or servants of the people.

It is obvious, that the Government may employ that political power for the purpose of getting into its hands the economical resources of the people. In so far as the Government succeeds in monopo-

lizing these resources, the Government is no longer the servant but the master of the people.

In one of his speeches to the Communist Party, at the beginning of the Bolshevik régime, Lenin pointed out that complete control of the country by a minority could be obtained and could only be obtained by suppressing private trade, by monopolizing all products and by instituting a system of Government rationing. In this way, by means of pervasive economic control, the Government would be able to maintain and to make secure its political position.

The aim, conscious or unconscious, of every advocate of what is improperly called "public ownership" is not dissimilar to that of Lenin. The root idea of governmental operation of industrial enterprises is that by means of the economical power obtained by their operation, a permanent political power may be maintained. Permanence is not affected by change of ministries, because in such cases, the economical power is in the hands of those politicians who make and unmake ministries, and who, irrespective of political parties, are able to place their creatures in the political positions.

An interesting example occurred in Siberia during the frequent changes in administration which took place before the Bolsheviks acquired complete control. There was a moment when the ministry of the day decided to denationalize all the nationalized industries excepting those which were of the

nature of public utilities; but the question was immediately raised by the Left Wing as to what constituted a public utility. After prolonged discussion of the subject, no means of differentiating industrial enterprises in this respect could be found and all remained nationalized as before. The politicians ostensibly opposed to nationalization of enterprises, found that their political power depended upon their retaining economical power in their hands.

The Hydro-Electric Commission of Ontario affords in the course of its history very vivid instances of the use to which a combination of economical monopoly and political power may be put. Since the Commission was established, there have been one Farmers' Government and three Conservative Governments. All of these, as well as the contemporary Oppositions, have been under the control of the Hydro-Electric Commission. All of the Governments, often greatly against their will, have been obliged to find the enormous sums of money demanded by the Commission for the carrying out of its projects. All of the Governments have repeatedly been called upon to legalize by ex post facto legislation, acts done by the Hydro Commission in flagrant violation of Statute Law and even of the Acts passed in behalf of the Hydro itself. In attempts at self-protection, the Governments have nominated members of the Commission committed to their interests. These members found them-

selves helpless. Some of the members resigned voluntarily; one resignation was demanded. In March, 1924, Mr. Ferguson, Premier of Ontario, in criticizing a contract which had been entered into by the Hydro-Electric Commission for the supply of power, used the following not very dignified language:

> It was one of the most damnable contracts that was ever consummated. . . . Ramsden [who had been appointed a member of the Commission by the previous (Farmers') Government] was just a stool pigeon for the Government [the Farmers']. It was decided here in Queen's Park [the Government Buildings] what the Commission should do and Ramsden went down to the Commission's office and put it through. Ramsden and Colonel Carmichael put this contract through in the absence of the chairman.

The new Government cancelled this contract and called for the resignation of one of the offenders; the other resigned voluntarily. Both the making and the cancelling of the contract were political acts and both illustrated the closeness of the contact between the Commission and the Government of the day. Yet Government after Government in self-protection against condemnatory criticism, which came naturally from the quarters in which they were attempting to raise the necessary loans, appointed special Commissions of Inquiry and special audits of the Hydro-Electric accounts. In spite of disclosures which would have ended the career of any ordinary politicians, these investigations all

somehow missed fire. Successive governments have remained tied to the Hydro-Electric enterprise, with very inadequate control over it, yet full responsibility for it to the people, bound to find whatever extravagant amounts its administration demanded and hoping for some miracle by which they might be relieved from what had become an almost intolerable incubus.

There are many complications and several unexplained mysteries in Ontario Hydro-Electric history but the fact is indisputable that because of its policy, the Hydro-Electric Power Commission of Ontario has from the beginning of its history been a menace to the financial credit and to the liberties of the people of the Province. The Chairman of the Hydro-Electric has for the past twenty years been the Dictator of Ontario.

In the following pages reference is made in detail to the circumstance that civil rights are among the matters placed by the British North America Act, (1867) under the control of the Provincial Legislatures. That Act contains no clause safeguarding contracts; but in place of a provision such as that referring to contracts in the Constitution of the United States, there is the power of disallowance of any Provincial statute which is reserved to the Dominion Parliament. This power has, however, been very rarely exercised and in consequence, it has been of late years a dead letter. The Provincial Legislatures have taken advantage of this circum-

stance to pass a series of measures which cannot be described otherwise than as confiscatory. The Hydro Commission did not initiate the promotion of such measures but it developed and extended the policy of hostility to private enterprise. Some of its Bills can even be characterized as being as discordant with common sense as they are with sound principles of law.

When a Government leases or sells the natural resources of a country it retains its visitatorial power or right of inspection and criticism. This right is inherent in the Government and may be exercised in the public interest in respect to any public or private enterprise whatsover. The Government as trustee for the public is ex-officio critic. Whenever the Government, either as a Government or in the form of an organ created by it and insusceptible of differentiation from it, assumes operation of an industry, especially when to this operation there is added the incident of monopoly, there ceases to be any independent official critic of that industry. Moreover, anyone within the Government industry or outside of it who ventures to criticize the industrial proceedings of the Government or the financial soundness of its enterprises is denounced as an enemy of the people, as an agent of profiteers or of the interests of capital or whatnot. Criticism under these circumstances is either rare or non-existent. An auditor who dared in the course of his professional duties to object

to expenditure would be presented with the alternative of withdrawing his objection or adversely affecting his professional career. An engineer who pointed out some weakness in the technical aspects of the Government undertaking, need not hope for Government patronage in the future. A newspaper which ventured to criticize the undertaking would speedily be deprived of Government advertising. By these means it is very clear that a Government which embarks upon a large scale in industrial enterprise encounters strong temptations to act in an arbitrary manner. It cannot afford to have the defects of its administration disclosed. It must close the mouths of critics. In this way, the Government and its enterprises are defended by a reign of terror, varying in its incidents according to the country and to the stage of social development. Such a reign of terror has been established by the Ontario Hydro-Electric. Its newspapers can be counted upon to suppress information unfavorable to it and to abuse anyone who ventures to raise his voice upon its imperfections; its advocates in the municipalities and in the local legislature denounce everybody who calls it in question, demanding his dismissal from any public office which he may occupy and pursuing him with all the ruthless invective at their command. By these means the Hydro-Electric has acquired a strangle hold upon Ontario, plunging it into over two hundred millions of debt and embarrassing its finances and its credit.

The mere fact of increase of debt involving un-

precedented issues of bonds and other financial operations of much greater magnitude than either the political heads or permanent officials of the administrative departments had been accustomed to and for the management of which they were not fitted, exposed these persons to peculiar temptations. These temptations they do not appear to have had the moral stamina to resist. Three former officials of the Ontario Government have been found guilty of misappropriation of public funds, one of these in direct connection with the Hydro. These persons would not in all probability have been exposed to temptation had not the needs of the Hydro induced carelessness and even worse in the public finance of the Province.

The popularity of the Hydro-Electric has been promoted by the ingenious device of giving domestic light service in the centres of population at abnormally low rates, while the rates for power are relatively high within the same areas. In the rural districts where the population is scanty and the votes are distributed, the rates alike for domestic service and for power are abnormally high. Only the monopoly of supply which the Hydro has established renders such rates possible. There is no appeal and even where as in some cases gross injustice has been perpetrated, there is no redress, for by an Act passed in the interests of the Hydro, the law courts are closed against any suit that may be brought against it.

Thus on grounds of public policy and on grounds

of economic advantage the achievements of the Ontario Hydro-Electric have only to be known to be condemned. That they will be generally known and condemned at no distant period of time, there can be no question. The excessive over-capitalization of the undertaking due to extravagance in construction, to the greater part of that construction having been unnecesary and to the fact that it was carried out during the war while wages and prices of machinery and materials were at their maximum, must necessitate a serious advance in the rates. There are already signs that such advance is in contemplation. When the municipalities discover that they have been duped into expending large sums in providing street lighting plants on a scale based upon promises of exceedingly low cost of power, and when, owing to the shortage of power, they discover that rates are raised and only favored customers can be supplied, the props which have hitherto sustained the Hydro must be withdrawn and the hollowness of its propaganda, upon which it has spent enormous sums, must become apparent.

The following pages show conclusively that the Ontario Government committed a fatal error in permitting what was originally designed to be an investigating, inspecting and controlling department of the Government, to transform itself into a monopolistic enterprise, to legislate itself outside of the law and to conduct itself in so arbitrary a manner that it has become wholly out of place in a democratic country.

I

DEVELOPMENT OF HYDRO-ELECTRIC POWER ON THE AMERICAN SIDE OF THE FALLS

ALTHOUGH up till about 1880, the quantity of water taken from Niagara Falls for the production of mechanical power was an insignificant fraction of the total fall, the methods of withdrawing and discharging the water were by no means conducive to the preservation of the scenic beauty of the Falls on the American side. Fears very naturally arose in the public mind that the region so richly endowed by nature would be deprived altogether of the beauty which made it unrivalled in its kind and brought to it annually immense numbers of visitors. The earlier adventurers may be forgiven for disregarding a contingency which could only arise seriously when the number of enterprises assumed certain proportions, and when indifference to the effect of these enterprises upon the natural surroundings became manifest. The fears mentioned above found expression in the passing in the year 1885 of legislation by the State of New York providing for the purchase from the private owners of the river bank and the Islands in the neighborhood of the Falls, of a sufficient area of land to preserve the amenity of the Falls and to enable the tourist

traffic to be regulated. Under this legislation also, the early raceways and the mills dependent upon them were eliminated. This operation was facilitated by the construction of the Hydraulic Canal which in any case would have prevented the growth of small independent concerns established for the purpose of drawing water for the operation of small units. The consequences of the legislative action and of the immediately preceding private enterprises were great improvement in the aspect of the Falls and the more economical use of power.

The steps taken by the State of New York were followed by the Province of Ontario. A corresponding Act passed by the Provincial Legislature provided for an extensive purchase of land adjoining the Falls on the Canadian side and for the establishment of a Park Commission with full powers over the exploitation of water power. The administration was vested in the Commissioners of Queen Victoria Niagara Falls Park, the Commissioners being appointed by the Lieutenant-Governor-in-Council of Ontario, otherwise the Government of the Province.

These measures were supplemented by a Treaty concluded in 1910 between the Governments of Great Britain and the United States, limiting the amount of water which might be diverted from Niagara River or Lake Erie for the purpose of developing mechanical power. This limitation had the effect of preserving the beauty of the Falls, but

it was expressly stated in the Treaty that the object of the limitation was the preservation of the level of Lake Erie in the interests of navigation.[1] The quantity of water which might be diverted upon the Canadian side was fixed at 36,000 cubic feet per second of aggregate daily diversion.

It is obvious that the horsepower developed from this quantity of water must depend upon the head which is utilized and that plants designed for the utilization of an inferior head might be regarded as using the available waterpower to less economic advantage than plants which utilized the water at a greater head. But the greater the head, the greater the cost of installation. Especially in respect to the pioneer plants, the question of cost had to be considered very narrowly. Thus the earlier plants were installed with a head less than was physically possible. At any time the problem must be one of relative economic advantage. The gain of a few feet of additional head may or may not be worth the additional cost in canalization and otherwise.[2]

Long before the negotiations which led to the Treaty were initiated, during the period when interest in the public movement for the preservation

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[1] This consideration is important in view of a possible revision of the Treaty.

[2] Cf infra—It is very doubtful if the enormous cost of upwards of $60,000,000 incurred by the Hydro-Electric Power Commission of Ontario has been justified by the increased head obtained by it over the previously constructed plants.

of the natural beauty of the Falls was excited in the United States, the writer heard Sir William Thomson (later Lord Kelvin) make impromptu the following remarkable suggestion:

> A long while [he said] must elapse before the whole of the volume of water now passing over Niagara Falls could possibly be utilized for the production of power, but if the whole of the water were so utilized and if the lofty cliffs over which the waters now tumble, were bare, think what would then be their aspect! The face of the precipice would be covered with aquatic plants giving in summer a splendor of color which with all their watery magnificence the Falls do not now possess, while the pool below would have a quiet beauty instead of its present turbulence.[3]

The writer does not recall, if Sir William suggested, as he may have, that the abrasion of the crest of the precipice from the flow of the stream and the consequent progressive change in the form of the Horseshoe Falls would cease, while further abrasion would only occur very slowly under the less violent forces of the atmosphere.

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[3] The passage is from a speech at a public meeting in Glasgow, about 1889. It does not appear in any published writings of Lord Kelvin.

II

CONTRAST BETWEEN THE GROWTH OF INDUSTRY ON THE AMERICAN SIDE OF THE FALLS AND THE ABSENCE OF THIS GROWTH ON THE CANADIAN SIDE

For more than fifty years every observant tourist who found his way to Niagara Falls has been impressed by the vigorous industrial development on the American side and the complete absence of any such development on the Canadian side of the Falls. While some of the reasons for this difference lie in the general economic history of the respective countries, importance must be attached to a difference in the attitude of the people of the two countries especially during the period of the greatest development on the American side. In the United States the presumption was strongly in favor of private enterprise, up till recent years even of unrestricted private enterprise. In Ontario during more than twenty-five years, positively, and during a longer period, incipiently, the presumption has been against private enterprise. The consequences of these divergent attitudes are seen in the industrial development of the New York side and the absence of it on the Ontario side. The Ontario farmers and small tradesmen who consti-

tuted the majority of the population were so anxious to prevent anyone from making profit out of them that they did their utmost to prevent any profit being made by anybody but themselves. Such a suicidal policy sterilized industrial development in the Province and increased the price of capital to the Ontario borrower by diminishing the opportunities for local accumulation. The hostile attitude of the Ontario public towards private initiative is thus not a new development. Much has been done in recent years by the Ontario press to propagate this hostility. The popular attitude was quite clearly expressed, for example, in an article published in an Ontario country newspaper, *The Brantford Expositor* (March 12th, 1903), before the Hydro-Electric Power Commission was appointed. The author of the article referred to the creation of the Niagara Falls Park Commission as "a stroke of fortune."

> But for this fact [he said] the electric age would have found the properties adjoining the greatest source of energy in the world in the hands of private parties, who would have given away sites without any regard for public interest, and without any advantage to the Provincial revenues. This is precisely what has occurred in the neighboring State of New York, where all the concessions have been granted without any monetary conditions or other proper restrictions, whereas the Ontario Government is already in receipt of $60,000 from the three companies which have received concessions, and this amount will be constantly increased as development proceeds.

There are some inaccuracies in this passage, but

it renders quite faithfully the view popular at that time in Ontario. In this view, the substantial fact was overlooked that under conditions of unrestricted development there had grown up on the American side of the Falls a flourishing industrial city which was engaged in the production of commodities for the general advantage and in the employment of large numbers of wage earners, including highly skilled professional chemists, engineers and others, and was yielding in actual payment of taxes to the State and Federal Treasuries, amounts compared with which direct special levies upon the Power Companies would have been insignificant. Had restrictions against the use of private property been made in the early stages of Niagara development, and had large sums been exacted by the State for water concessions, no capital could have been obtained for the development of water power, and the American side would have been as industrially sterile as the Canadian.

Before the middle of the nineteenth century and even before many technical improvements indispensable for fulfilment had actually been made, dreams of a great future for Niagara began to form themselves in the minds of local enthusiasts on the American side of the Falls. The enormous possibilities of generating power from the Falls gave rise to the idea that the region round about them might develop quickly into a great industrial center, to which the optimists in anticipation gave the

name of Manchester, having in mind the rapid growth of the cotton manufacture which at that moment was making the Lancashire City the center of the first industrial region of the world.

Although Niagara Falls afford a larger amount of water power than any other like limited area in America, they are not the only water falls and their very magnitude handicaps them in competition with other falls as well as with other sources of power, because of the relatively greater cost of "harnessing" giant powers over other powers less formidable. The utilization of the power of Niagara on any great scale was not possible until there had been a large general accumulation of capital and until an enterprising and even speculative spirit had grown up in the community, nor was this utilization possible until the needs of the railway system had been provided.

One hundred years ago, the Northwestern part of New York State was forest land in which there were only occasional clearings. Yet in these clearings factories were springing up as well as farms. The general economic policy of the time undoubtedly contributed to the rapid growth of industry, especially between 1825 and the year 1837, when owing to excessive rapidity of development there was a commercial crisis. This policy cannot be lightly condemned on the ground that it was a policy of *laisser faire*. The historical facts are that the policy of *laisser faire* which came to America

from France both before and after the French Revolution indicated a reaction against a previous period of excessive State control, and that to a new country in which there were huge natural resources, a scanty population and slender accumulation of capital, the adaptation of a policy of free exchange of services and goods without the encumbrances of licenses and governmental regulation was extremely obvious. The United States thus began its career as a nation on the basis of *laisser faire* and without now rejecting unduly the expediency of governmental regulation within certain limits, it may be said without question that the foundations of the prosperity and the beginnings of the remarkable growth of population in the United States were laid during a period in which the attitude of the public mind was opposed to restrictions upon private initiative and strongly in favor of necessary restrictions upon governmental interference with private civil rights. Speculation on the consequences to the United States of today, had an opposite policy been adopted a hundred years ago, must be left to the imagination. The remark may be permitted that prosperity and unquestionable general well-being having resulted from industry stimulated and operated by private enterprise, the social advantage of the discouragement of private enterprise is not apparent.

III

THE GOVERNMENT OF ONTARIO AND THE DEVELOPMENT OF POWER AT NIAGARA FALLS

1885-1902

THE Dominion of Canada has under the British North America Act (1867) control over navigable rivers but property in land is vested in the Provincial Governments and thus the control of the land areas on the Canadian side of the Falls comes within the competence of the Government of Ontario. The Niagara Falls Commission was endowed by the Provincial Legislature with power to regulate the use of water diverted from Niagara Falls as well as to determine the character of any works which might be constructed for the utilization of water. The Commission was also endowed with authority to grant franchises to companies for the generation of power, subject to the approval of the Provincial Government. Up till that time, the only power taken from the Falls on the Canadian side was the small quantity of 2,100 H.P. used by the generating plant of the Niagara Falls Park and River Railway.

In 1887, a group of American and Canadian pro-

moters formed a company named The Ontario Power Company with the object of developing water power by means of a canal from the Welland River or Chippawa Creek to the Niagara Gorge. The Company applied for and obtained a Dominion charter.[1]

This Dominion charter to the Ontario Power Company was still in force, although no construction had been undertaken in respect of it, when in 1892, representatives of capitalists in the United States approached the Ontario Government and offered to install a plant on the Canadian side. They proposed to develop 150,000 H.P., to submit their plans for approval to the Niagara Park Commission and to pay to the Provincial Treasury $10,000 a year for the first ten years with $1,000 additional per annum for the succeeding ten years, and $35,000 a year for further periods, on condition of being given a monopoly of the production of power from Niagara Falls on the Canadian side during the currency of their lease. The Ontario Government of the day had not previously looked upon the Niagara Falls as a provincial asset. The only charter of importance had been granted to the Ontario Power Company by the Dominion Government. There seemed no prospect of the Provincial Treasury deriving any benefit and no work had been done in connection with the charter. The

[1] Ontario Power Company, Acts relating to, Statutes of Canada 1887 Ch. 120, 1891, Ch. 126, 1893 Ch. 89, and 1899, Ch. 105.

Provincial Government therefore decided to ignore it. The prospect of receiving even a small annual rental from a disregarded source was dazzling. The Government was so afraid that "the lunatics," as it called the members of the new syndicate, might change their minds, that an arrangement was speedily concluded with the leader of the Opposition [then Mr. (afterwards Sir) William Meredith] to permit the passage through the Legislature of the necessary Act without discussion and without delay. The only qualifications upon the original proposals were that the franchise should run for twenty years with the option of renewals for four similar periods and that the promoters should undertake to provide for the supply of 10,000 H.P. ready for actual use by November 1, 1898.[2]

The franchise was accompanied by a monopoly as proposed. The Canadian Niagara Power Company, a subsidiary company of the Niagara Falls Power Company on the American side, was formed to operate the franchise.

The passing of this Act by the Ontario Legislature was followed by an outcry. The Ontario Power Company very naturally considered that rights given to it by the Dominion Parliament had been over-ridden by the Provincial House. This indeed was the first of a series of questionable Acts

[2] Queen Victoria Park Commissioners and Canadian Niagara Power Co. Agreement of April 7, 1892. Toronto 1897.

passed by the Ontario Legislature in connection with the development of power at Niagara. There was no excuse for it, excepting that from the point of view of the Legislature, that body could do what it liked. There can be no doubt that the bad example set by the Ontario Government of that day in nullifying a contract entered into by the Dominion Parliament, encouraged subsequent Ontario and other Provincial Governments in the adoption of a similarly arbitrary and unjust policy. The question of a grant of a monopoly overriding a Dominion Statute and Charter fell, however, into the background after an acrimonious controversy. The new company was unable to finance the construction necessary to sustain its monopoly, and the old company, even if there had been no monopoly, was equally unable to undertake the construction of its projected plant. The conditions of the demand for power at that time and the financial situation were not favorable. The period allowed by the Niagara Power Company's agreement having expired without any work having been undertaken, the monopoly lapsed and no attempt was made to revive it. In 1899, the Company entered into a new Agreement with the Ontario Government under which annual rentals were fixed according to the quantity of power developed—$15,000 for any development up to 10,000 E.H.P. and $1 per H.P. additional for power up to 20,000 H.P.; $0.75 per H.P. additional from 20,000 to 50,000 H.P. and $0.50 per

H.P. for any excess over 50,000 H.P. A franchise was granted for fifty years with an option of renewal for three subsequent periods of twenty years each, subject to readjustment of the rentals at each renewal. There was a provision that 10,000 E.H.P. was to be available by July 1, 1903. Subsequently an extension of a year was granted and a penalty of $500 per week was provided for in cases of non-fulfilment of the agreement.

In 1900, the Ontario Power Company, irrespective of any claims it might have under the Dominion charter, entered into an agreement with the Niagara Park Commissioners representing the Ontario Government. This agreement permitted the company to divert sufficient water from Niagara to develop 200,000 E.H.P. A franchise was granted to the Company for fifty years from April 1, 1900, with an option of three renewals for twenty years each, subject to terms and readjustment of terms as in the case of the other Company.[3] Both Companies now prosecuted the work of construction vigorously and by 1905, they were supplying power partly for use in Canada and partly for export.

[3] Agreement of April 11, 1900. Toronto 1900.

IV

NIAGARA ATTRACTS THE ATTENTION OF POLITICIANS

1902-1906

Up till the year 1902, Niagara was not in politics, nor were politics specially concerned with Niagara. In that year there began a series of political controversies in which municipal councils and the Provincial Legislature were alike engaged. These controversies were promoted and followed by a movement the full consequences of which to the Provincial financial credit and to the character of Provincial administration have yet to be realized. The controversies in question began immediately before the granting of a charter about to be mentioned. They raged round that charter and they continued during the whole history of the Company to which the charter was granted. A clear understanding of the origin and character of this hostile movement against private enterprise in Ontario is essential to comprehension of the present situation in that Province. The general effect of this movement has undoubtedly been the deterioration of the administration and the discouragement of investment of capital.

Hostility to the operation of public utilities by joint stock companies had been developing for some years both in the United States and in Canada, especially in Ontario, and more specifically in Toronto, when in 1902 this hostility became acute in that City. At that time two important public services were under Company control, The Gas Works and the Street Railway. The former was a stable and well-managed enterprise. No fault was found with the service, but the idea gradually took form in the public mind that it was too profitable. An incipient movement toward municipalization was headed off by the Company which offered to make the Municipal Corporation a partner in the Company and to admit upon its Board of Directors a representative of the City. This plan has worked well and the Gas Company has long been outside the sphere of political agitation. The Street Railway had a different fortune. While it still employed horse traction, it was acquired by an active group headed by Sir William Mackenzie, who shortly afterwards began the series of railway constructions in the Canadian Northwest which eventually became the Canadian Northern Railway System.[1] The Toronto Street Railway was electrified in 1892, the plant being operated by steam power. The relations between the Street Railway Company and the City Council were never very

[1] This system was ultimately acquired by the Dominion Government.

friendly. In the later years of the last century, these relations became acutely hostile. There were probably faults on both sides. The City Council was perhaps unduly harassing in its demands and the direction of the Company was perhaps tactless in its relations with the Council. Thus when it was proposed to install a plant for the generation of electrical power at Niagara Falls, to transmit that power to Toronto and to apply it to the Street Railway and to domestic and street lighting, the project was like tinder applied to material already inflammable. The wildest canards were set afloat. Sir William Mackenzie was accused of having allied himself with the New York Central; there was to be a huge merger of electrical interests at Niagara Falls and Toronto was to be placed at the mercy of foreign capital. There was not a word of truth in all this, but these canards served to contribute to the propaganda of those who were at that time advocating public ownership. Sir William Mackenzie was not in fact moving in the matter. The project arose out of the circumstances of the time.

The Directors of the Toronto Electric Light Company conceived the idea of bringing electricity at high tension from Niagara Falls for the purpose of their own Company and entered into negotiations with the Niagara Falls Power Company of New York for the purchase of power. The Directors of the Toronto Electric Light Company formed an-

other Company under the name of the Toronto and Niagara Power Company for the purpose of transmitting and distributing the electrical power which they intended to purchase. This Company was incorporated by an Act of the Dominion Parliament passed in 1902 (2 Edw. VII. Ch. 107). There was no provision in this Act for the generation of power by the Company. The negotiations with the Niagara Falls Power Company having fallen through, the incorporators of the Toronto and Niagara Power Company under the name of "The Syndicate" obtained on January 28, 1903, a franchise from the Commissioners of the Queen Victoria Niagara Falls Park who were authorized by the Provincial Government to grant such franchises. The franchise permitted it to

> generate electricity and pneumatic power, or any other power to be transmitted . . . to places beyond the Park . . . and the Commissioners granted . . . license irrevocable to take from the waters of the Niagara River within the Park a sufficient quantity of water to develop 125,000 E.H.P. The Syndicate is given the right to construct and operate works . . .

For this franchise and these rights the Syndicate agreed to pay to the Commissioners the following rentals:

1° A clear yearly rental of $15,000.

2° $1.00 per horsepower per annum for power generated and used and sold or disposed of for 10,000 H.P. up to 20,000 H.P., 75 cents per H.P. per annum from 20,000 up to 30,000 H.P., 50 cents per H.P. per annum for over 30,000 H.P.

The total rental for 125,000 H.P. would thus be $80,000 per annum. In consideration of these provisions, the Park Commissioners agreed as follows (paragraph 16):

> The Commissioners will not themselves engage in making use of the water to generate electric, pneumatic or other power except for purposes of the Park . . .

It will be seen later that this clause in the agreement was absolutely disregarded by subsequent Governments.

After receiving its franchise, The Syndicate formed The Electrical Development Company and obtained from the Government of the Province of Ontario a charter of incorporation dated February 18, 1903. The Toronto and Niagara Power Company was then merged in the Electrical Development Company, which thus came to be possessed of the powers granted by the Dominion Parliament to the former Company in 1902. To the latter Company was also assigned the franchise procured by the former Company from the Park Commissioners. This assignation was effected on March 21, 1903. All franchises granted and agreements entered into by the Park Commissioners are subject to the approval of the Provincial Government and this franchise had previously been so approved.

The state of mind which had been by various means worked up induced the City Council of Toronto to adopt a hostile attitude towards the Electrical Development Company when it applied for

its charter from the Provincial Legislature. Those who were customarily nervous about Dominion interference with Provincial rights were up in arms against the Dominion Parliament. They argued that the Dominion had encroached upon the Provincial prerogative in giving to the Toronto and Niagara Power Company, on the footing that its operations would be for the general benefit of Canada, powers to use the City streets for the erection of its poles or to take up these streets for the construction of electrical conduits, etc. Great pressure was brought to bear upon the Provincial Legislature to refuse the charter, but the Provincial Government was at that time more anxious to secure revenue from a chartered Company than it was to placate the City Council of Toronto and the charter was granted. It should be observed that the contemporary Provincial Government was a Liberal Government while the City of Toronto returned in general conservatives both to the Provincial Legislature and to the Dominion Parliament.

The capital of the Electrical Development Company was $11,000,000, $6,000,000 in First Mortgage Bonds and $5,000,000 in Stock. After many engineering difficulties, the construction of the works of this Company was effected, a transmission line was built to Toronto and it began in 1907 to supply electricity to the Toronto Street Railway Company, and to the Toronto Electric Light Company, both of these Companies having previously used steam

electric plants. The interests controlling the consuming Companies and the generating Company were practically identical. Most of the capital for the new enterprise was obtained in London.

While the forebay excavations for the Niagara plant of the Electrical Development Company were being made, it became apparent that a very much larger body of water would be available than had been anticipated, and that it would be possible from the same forebay to develop an additional 125,000 E.H.P. In April, 1905, while there was yet time to do the necessary work before the coffer dam was removed, a second franchise was applied for. This franchise was granted by the Provincial Government on April 14, 1905. The then Premier, Mr. G. W. Ross, insisted upon a provision to the effect that one-half of the additional power, or 62,500 H.P., should be kept available for the Municipalities and should be sold to them if they desired it at prices to be fixed by the Government.[2]

The Liberal Government of Ontario introduced in 1903, a measure "to provide for the construction of Municipal Power Works and the Transmission, Distribution and Supply of Electrical and other Power and Energy.[3] This Bill was brought in by the Government in obedience to the clamor of some of the Ontario Municipalities. The measure gave Municipalities authority to organize municipal

[2] For the outcome of this franchise, see below.
[3] Passed in 1903 as 3 Edward VII Ch. 25 Ontario Statutes.

supply of power if they desired to do so; but it required that before they attempted any construction, they must make full investigation into the project. The details of the subject matter of such investigation were given in the Act, and the mode in which the investigation was to be conducted by commissioners appointed by the Municipalities was prescribed. The Government was to undertake no responsibility nor was it to be liable for any expenses. If a Municipality undertook to transmit and distribute power in consequence of a report favorable to that course being rendered by the Commission, it was permitted to issue debentures under certain regulations; but it was not permitted to increase its debenture debt beyond the amount fixed by the Municipal Act nor was the Municipality permitted to increase the rate of taxation which under that Act it was permitted to levy.[4] The Government had already in the contract with the Electrical Development Company, pre-empted the sup-

[4] A Clause is to be found in the Ontario Municipal Act, known as the Conmee Clause, intended to prevent municipalities from resorting either to expropriation or to ruinous competition, in order to acquire "gas, electric light or water works," and to require municipalities to purchase any existing companies of this description operating within their borders, at a fair price after arbitration, if they acquire them at all. See Ontario Statutes 1903, Consolidated Municipal Act 1903, Sec. 566. In the Revised Municipal Act 1913 (Ontario Revised Statutes) the "Conmee Clause" was repealed; but under section 537, sub. sec. (2) repeal was not to take effect until a Proclamation in that behalf by the Lieutenant-Governor was issued. No such Proclamation has been issued so that contrary to the customary opinion in Ontario, the "Conmee Clause" is still in force.

ply of 62,500 H.P. for the Municipalities if they should desire to use that quantity. The Act permitted the common action of groups of Municipalities. One group of Municipalities availed itself of the terms of the Act and appointed a Commission. This Commission came to be known as the Municipal Electric Commission.

The Commission was appointed by a group of Municipalities—Toronto, London, Brantford, Stratford, Woodstock, Ingersoll and Guelph. The Commission consisted of one representative of Toronto, one of Brantford, and one of London (the last mentioned being Mr. Adam Beck who was a Minister in the cabinet of the Conservative Government of Sir James Whitney). The only technically qualified member of the Commission was Professor R. A. Fessenden, of New York.[5]

At a later period, Sir James Whitney called this Act "a gold brick."[6] The Act was undoubtedly devised for the purpose of preventing the Municipalities from plunging in an uninstructed fashion into reckless adventures in the electrical field. In any case, interest in the Act was swept away by the more sweeping measures of the succeeding Government.

The City of Toronto, in addition to opposing the charter of the Toronto and Niagara Power Com-

[5] For Report of this Commission see below.

[6] In debate in Provincial Legislature reported *Mail and Empire* Toronto, May 10, 1906.

pany, applied to the Provincial Legislature in February, 1903, for an Act empowering the City to build a transmission line of its own from Niagara Falls to Toronto. The Council proposed to buy power from one or other of the generating Companies and to apply the transmitted power to street and domestic lighting. This project met with little support in the Legislature and the bill was thrown out.[7] During the immediately succeeding years, the attitude of the City Council became more and more hostile to the joint stock electrical enterprises. When the Electrical Development Company had nearly finished its plant in 1906, and when it was almost ready to supply power, the question of a contract for street lighting arose. Here it appeared as though the representatives of the Electrical Development Company showed a want of tact. Conceiving that they were secure in their position and having in mind that they had obtained, not easily, the large sums of money invested in their enterprises, having in mind also the serious engineering difficulties they had encountered, they adopted a tone in the negotiations with the representatives of the City which aroused on the part of the latter deep resentment. Nor were the representatives of the City more considerate.

A personality who played an important rôle in

[7] For the arguments advanced in favor of the entrance of Toronto into the business of transmission of power rather than into that of generating power, see *Toronto World*, February 10, 1903.

the discussions between the City of Toronto and the power Companies was the late Cecil B. Smith, who from 1899 to 1901 had been assistant engineer of the City of Toronto and who between 1901 and 1904 was resident engineer of the Canadian Niagara Power Company.[8] He it was who suggested that the Municipalities throughout Ontario should be roused against the Electrical Development Company.[9]

The Municipalities were known to want cheap power, i.e. power cheaper than they could obtain it from steam or gas producer plants—not merely for industrial purposes but also for traction and domestic and street lighting. Indeed, they wanted cheap power chiefly for other than industrial purposes. The Municipal Electric Commission having investigated for about twelve months, made its Report public on April 4, 1906. The Commissioners, as was foreseen from the circumstance that all of them were previously committed to the policy of municipalization of the generation, transmission and distribution of electricity, reported in favor of

[8] Mr. Smith was afterwards engaged in several civic and governmental undertakings. He was Chairman of the Timiskaming and Northern Ontario (Government) Railway (1905-06), on the staff of the Hydro-Electric Power Commission of Ontario (1906-07), and Superintendent of Construction of the Winnipeg Civic Power Plant at Point du Bois Falls (1906).

[9] Mr. Cecil Smith was probably the person chiefly responsible for inducing Mr. Adam Beck to engage in a propaganda directed, to begin with, towards frightening the generating Companies into selling their current at a low price even although that price should be unremunerative.

the adoption of such a policy by the Municipalities whose interests they represented. They suggested that a site for the construction of a generating plant sufficient to develop 60,000 E.H.P. should be acquired from the Park Commissioners. In the event of other Municipalities being unwilling to cooperate, the seven Municipalities previously mentioned were advised to undertake the responsibility. The Commissioners had taken trouble to procure technical advice. In addition to Professor Fessenden, who was a member of the Commission, they had consulted Mr. Randolph, E.E., of Chicago, and Messrs. Ross & Holgate, of Montreal. The Commission estimated the capital required for the development, transmission and distribution of three systems—one for the development of 30,000 E.H.P., one for 60,000 E.H.P., and one for 100,000 E.H.P. The first was estimated to cost $6,684,000; the second, $9,355,000; and the third, $11,900,000. The Commissioners suggested that the largest of these schemes should not be undertaken unless at least eleven Municipalities, which they named, cooperated in the scheme along with the seven by which they were appointed.

The Commissioners proposed to finance the scheme which might be adopted, by the participating Municipalities through the issue of debentures by them to the estimated amount of their respective shares of the capital cost. These debentures were to be handed over to trustees who were to sell

them and pay the proceeds to a Board of Construction Commissioners who were to be appointed by the participating Municipalities. Bonds were then to be issued by the Construction Commissioners to the amount of the proceeds of the debentures.

The Commissioners recognized that before proceeding with the undertaking, the plants of the existing distributing Companies, then operating by steam power in Toronto, London and Brantford, would have to be purchased, and they suggested that the participating municipalities apply for powers to purchase these plants. The Report concluded by stating that a large saving amounting to 63% would result from the operation of the municipal system and that under it electricity could be sold at prices beyond the reach of permanent commercial competition. This the Report stated was not open to argument.

It is doubtful if at that time (1906) the seven Municipalities could have raised in the open market upon favorable terms, without the guarantee of the Government, the amounts named in the estimates plus any increase of the cost of construction over these estimates and plus the cost of acquiring the distributing systems from the existing Companies. It is also doubtful if the several interests of widely separated municipal corporations could have been reconciled in such a way as to permit the scheme to work smoothly or that the Municipalities would have supplied adequate capital or

the means for providing adequate technical management. Yet this municipal scheme was to a certain extent a fair one. The Commission proposed that the distributing Companies should be purchased to begin with, then that a transmission line should be erected and a generating plant constructed. The Municipal Commission would thus have entered into active competition with the power Companies. Excepting for the expropriatory powers applied for by the Commission, such powers being denied by the Conmee clauses to which the Commissioners asked amendment, the competition of the Municipal Commission would not have had the power distributing Companies at a disadvantage. The competition, in terms of the recommendations, might have been fairly conducted. For that very reason the Report excited little interest, the propaganda had been active while the Commission was doing its work, and so far as the Chairman of the Commission was concerned, the propaganda was part of that work. The general public was indifferent and the Hydro enthusiasts had been formulating wider and more drastic schemes.

The Municipal Commission had been appointed and a large part of its investigation had been carried out while a Liberal Government was in power. It was well known that the Government was averse from engaging the Province in industrial adventures which must add to the obligations of the Province and must embark it in a more or less

speculative business. Before the Report of the Municipal Committee was issued, there was a change of Government. A Conservative administration came into power in January 25, 1905, and the enthusiasts for "Province-wide Hydro development" had begun to conduct a propaganda by means of which they hoped to force the new Government not merely to bring in the further legislation necessary to enable the Municipalities to carry out their schemes, but also to save the Municipalities the trouble and risk of financing them. In July, 1905, five months after it assumed office, the Government was induced to appoint a Provincial Commission to do on a large scale the work which had already been partially done by the Municipal Commission. Undoubtedly at this stage the new Conservative Government was not eager to undertake the responsibilities which were being thrust upon it by eager propagandists. But it had no other policy which might fairly be called constructive and therefore it was exposed to such an onslaught.

V

THE HYDRO-ELECTRIC POWER COMMISSION
FIRST PHASE

Investigation and Propaganda

POLITICAL craftiness of any high order cannot be attributed to the promoters of the Hydro; yet if they had been exceedingly crafty, their methods for attainment of their ends would not have differed substantially from those they adopted. At the commencement of their propaganda, they assumed a very plausible tone; they extolled the advantages of public ownership and assured the small consumer of power that his rates would be "cut in two";[1] they avoided any direct attack upon property and scorned the idea that the carrying out of their projects involved spoliation; in every way they were conciliatory. Only after their propaganda acquired momentum did they become truculent and then they became very truculent.

After they had worked up the Municipalities to a certain point, their next step was to get the Provincial government to appoint a Commission of

[1] *Toronto Telegram,* December 26, 1906, quoting from letter by P. W. Sothman, Chief Engineer of the Hydro-Electric Power Commission to the Board of Control of the City of Toronto.

Inquiry. This the Government could do without bringing the question before the Legislature, thus avoiding debate which from the point of view of the Hydro promoters would have been premature.

The Commission was appointed by the Government in July, 1905, and the membership of it was determined with a view to the eventual Report. The Chairman of the Commission was Mr. Adam Beck, who was a member of the Government without portfolio, and who was also a member of the Municipal Commission. There were two other members of the Provincial Commission. Neither was a person of importance or of special qualifications for such an office. The Chief Engineer to the Commission was Mr. Cecil B. Smith, who has been mentioned above. The Chairman and the Chief Engineer practically constituted, and certainly completely controlled, the Commission. They were both deeply committed beforehand to the Hydro plans. In fact, these were largely their own work. That the Report should show decided partiality for the Provincial Hydro schemes was therefore a foregone conclusion. The date of the appointment of the first Hydro-Electric Power Commission was July 5, 1905. After a few months, one of the members resigned on account of ill health and in consequence there was some delay until on January 26, 1906, when a fresh Commission was issued. The Report was the result of the work of the two practically identical Commissions, one lasting about six

months and the other about two months. The report was issued on April 4, 1906.[2] Considered as an account of an official investigation into a subject of great complexity and of enormous financial and industrial importance, the Report is of the most meagre and unsatisfactory character. It consists largely of the demands formulated at the instigation of the Commission by the Municipalities which were expected to participate in the scheme. The details of the possibilities of supply and the probable cost of it are very slender. The Commission explains this by saying that the Hamilton Cataract Company and the Niagara Power Company alone gave some information, the other Companies having refused to recognize the right of the Commission to catechise them about their business, while the Commission was not authorized to bring pressure to bear upon the Companies. Whatever may be said of the tactfulness or otherwise of the attitude of the recalcitrant Companies, or of the tactfulness of the Commission, the absence of information indispensable for a thoroughgoing report which the Companies might perhaps have conveyed or the Commission might have procured otherwise, is very conspicuous.

Even under the circumstances, the Report would have carried more weight had it embodied the opinions and estimates of all the engineers employed

[2] The Report was published in three parts called FIRST, SECOND, and THIRD REPORTS, Toronto, 1906.

by the Commission. It is evident from the statement[3] of Mr. J. Stanley Richmond, one of these engineers, that the reports of some of the engineers were suppressed because their estimates of cost did not coincide with the preconceived and widely disseminated notions of the promoters of the Hydro.

The salient points in Mr. Richmond's letter are these:

> Up to the end of January, 1906, I had the honor to represent the Hydro-Electric Commission of the Province of Ontario in several of the localities of the Province, and I suppose, therefore, that it can be taken for granted that I am somewhat conversant with the aims and endeavors of this Commission. . . . It hardly needs stating, of course, that in such case the truth is the point aimed at. . . . I desire to take up the analysis of some of the statements contained in the Commission's Report. . . .
>
> Power from a 50,000 E.H.P. plant can be delivered to Toronto at $16.53 per horsepower per year.

Including only the annual fixed charges for the generating plant and the similar charges for the transmission line, Mr. Richmond (who gives his calculation in detail) estimated the cost per E.H.P. at Toronto at $27.73 per E.H.P. per year instead of $16.53 as given by the Commission.

Mr. Richmond adds the significant sentence:

> Though as an electrical and mechanical engineer I was more or less responsible for the collection of a considerable amount of power data in many of the localities in the Province, the credit for the interesting figures contained in

[3] In a letter to *The Globe*, Toronto, April 18, 1906.

the report of the Commission belongs wholly to the Chief Engineer, Mr. Cecil B. Smith, and in no way, shape or form, is the least credit due to myself for the calculation or compilations of the cost estimates contained in the report which has appeared.

It is clear that where credit is due, responsibility must rest. In disclaiming credit for himself, Mr. Richmond threw responsibility for the publication of estimates which were not based upon the data collected by him, upon the Commission and naturally chiefly upon the then Chief Engineer, the late Mr. Cecil B. Smith. It is further evident that the conclusions of the Commission as regards cost were formulated beforehand and were based not upon exact data which were forthcoming and were rejected, but upon political exigency.

On December 6, 1906, the Hydro estimates were discussed at a meeting of the Toronto Engineers Club.

Those in attendance included some of the most prominent engineers in Canada, and they unhesitatingly and strongly condemned the engineering features of the scheme as outlined by the Hydro-Electric Commission and Mr. Beck. Since that date the engineers in attendance at that meeting have been the subjects of attack, and their motives openly called in question at public meetings for venturing to express their views on a subject with which they were fully conversant. No attempt has been made to meet the arguments advanced at the meeting of the Engineers' Club beyond the sweeping assertion that they were the opinions of interested or disgruntled engineers. The injustice of these attacks has called forth a protest from several of the engineers concerned, in which after re-

affirming the contention that the figure quoted by the Commission's engineer to the Toronto Board of Controllers as the estimated price of electric energy distributed from the outskirts of the city to consumers is simply a farce and will not bear investigation, they summarize their reasons, etc.[4]

Then follows a detailed criticism of the Hydro estimates for Toronto. The above statement was drawn up by the electrical engineers who were present at the meeting. Apparently the newspapers refused to publish the statement, for it appeared in one newspaper as a paid advertisement towards the end of December, 1906. The document was signed by Mr. R. G. Black, President of the Canadian Electrical Association, by the former editor of the *Canadian Engineer,* and by two consulting electrical engineers, one of whom was Mr. J. S. Richmond, whose name is mentioned above.

It is quite clear from a perusal of the Report of the Commission and from the criticisms upon it by competent persons that the Report was destitute of scientific value and was not a document upon which far-reaching legislation should have been based or even upon which a reliable judgment could have been formed upon the soundness of the proposed scheme.

The Report of the Provincial Commission and that of the previously appointed Municipal Commission were published practically simultaneously

[4] *The Globe,* Toronto, December 22, 1906.

and with a fanfare of trumpets. The propagandists decided that the occasion was suitable for a demonstration which would compel the vacillating Government to carry out what they were anxious to show was a mandate of the people.

A characteristic example of the methods by which the furore against private enterprise was fomented is to be found in the Report of a meeting of fifteen hundred delegates from the Municipalities of Ontario, which took place at Toronto on April 10, 1906.

> Delegates commenced to arrive at the City Hall as early as ten o'clock . . . 175 citizens of Galt came down by special train, "Galt and Niagara Falls" was their slogan. The Guelph delegation 150 strong came . . . on a special train decorated with banners and streamers bearing the words "Guelph for Government Ownership." . . . The Mayor of Toronto suggested that the Mayors, Reeves and Chairmen of the Boards of Trade of each municipality should address the Premier and Cabinet in one-minute speeches, confining themselves to a simple statement of the needs of their respective districts. . . . The Mayor of Toronto answering a question about the financing of the scheme said that the Report [of the Hydro-Electric Commission] provided for the construction of a developing plant for $12,000,000 or $15,000,000 to be guaranteed by the municipalities interested, and all paid off in forty years by a sinking fund. Meantime the cost of operation and interest charges as well as the sinking fund would be paid out of the revenue derived from the sale of power. After being photographed on the steps of the City Hall, the monster deputation was marshaled by the City Clerk's men, with the assistance of policemen, formed into line and proceeded four abreast to the Parliament Buildings. When it reached its destination the crowd was

addressed by the Mayor of Toronto. "As each of your speakers come up, say, 'We want cheap power and we want the Government to act quickly.'" The deputation filled the Legislative Chamber, floor and galleries. When the members addressed the Cabinet, the Mayor of Sarnia said: "I have been a life-long Grit (Liberal), but if this matter is taken up as a Government (Conservative) measure, I think I will be inclined to turn over." . . . The Mayor of Stratford said: "Manufacturing is growing in importance as an asset of our Province, becoming equal . . . to agriculture. We look to your Government to give us this power, and at once." The Premier [Sir James Whitney] assured the deputation that there would not be a moment's unnecessary delay on the part of the Government.[5]

Few actors are so self-contained that they can act without the stimulus of applause. In the Paris theatres the provision of such a stimulus is not left to the hazard of a capricious audience. It is provided by the employment of *clacqueurs* who are instructed when and what to applaud and when and what to shout. The Report of the meeting of the deputation to the Government in 1906 practically at the moment of the birth of the Hydro shows in a ludicrously conclusive manner the precise process of the Hydro *clacque.* There is the precise instruction, the exact words to be uttered, the length of time (one minute) during which each *clacqueur* was to occupy the exclusive attention of the Government, the marshaling of the *clacqueurs* four deep and their distribution over the whole House. It

[5] *Toronto News,* April 11, 1906.

must be allowed that the thing was effectively organized.

By means of demonstrations such as this the furore in favor of the Hydro-Electric was worked up. Whenever he found in later years difficulty in getting funds from the Government (for Sir James Whitney was from the beginning deeply distrustful of the enterprise), Sir Adam Beck organized a demonstration with "banners and streamers" and "one minute speeches." He easily terrorized Government after Government. These demonstrations cost money to organize. The money came out of the pockets of the Province through the Hydro Commission. It will be observed that the figures employed to interest these deputations and to keep up their enthusiasm were simply fictitious. The estimate in one of the speeches given above of $12,000,000 to $15,000,000 was exceeded by five to six times. The estimate of the cost to the City of Toronto was to begin with half a million. Up till 1915 the actual expenditure was $7,000,000.

Through these public demonstrations the Hydro secured the influence of the press. Once the Hydro-Electric actors got the illusion over the footlights and once the organized applause of the *clacque* was supplemented by the genuine applause of a simple-minded but uninstructed public, the press was forced to join in the applause. Gradually the press came to lead in the shouting and to aid in discour-

aging and suppressing all criticism of the Hydro. To say a word against it or against any of its proceedings came to be tabu.

Such was the organized method by which what afterwards became the Hydro obtained the driving force of public approval which enabled it to control the Provincial Legislature and to dictate to successive Provincial Governments. The dexterous use of artificially excited municipal enthusiasm and of provincial rights unwisely granted in a moment of extreme confidence in the outcome of unrestrained popular Government sufficed to place a small oligarchy in control of affairs.

The success of the scheme to arouse the Municipalities to play upon their newly discovered enthusiasm for "cheap power" was so great and the effect of monster deputations so overwhelming that from the Spring of 1906 onwards, the real Government of Ontario was the Hydro-Electric Commission, the history of which must now be related.

VI

THE HYDRO-ELECTRIC POWER COMMISSION SECOND PHASE

I

The Hydro Acts

ONE month after the reports mentioned in the preceding chapter had been published, or on May 7, 1906, and after the way had been prepared by demonstrations, the first of the numerous Hydro Acts was introduced into the local Legislature. This act was entitled, "AN ACT TO PROVIDE FOR THE TRANSMISSION OF ELECTRICAL POWER TO MUNICIPALITIES." The Bill was read a second time on May 9 and next day it passed its third reading without discussion. The Liberal leader, Mr. G. W. Ross, opposed the Bill; but his followers "bolted." They were afraid of their constituencies. The Legislature rose the same day (May 10). The practice which later was followed invariably, year after year, by the Hydro-Electric Power Commission of introducing Bills (in some years three or four at a time) in the closing days and even in the closing minutes of a legislative session, was then inaugurated. It is impossible to avoid seeing in this

practice which has often been denounced, a design to stifle discussion and to rush Hydro legislation before the weak points of it were discovered.

The chief provisions of this first Hydro Act were as follows:

1° The Commission created under the Act was to consist of three members, two of whom might be and one must be a member of the Provincial Government. The salaries of the Commissioners were to be fixed by the Government.

2° The Commission was empowered to fix the rates for electrical power to be charged to the municipalities by itself and also the rates charged by generating and distributing companies.

[In the original bill the Commission was given powers to control the rates of "light, heat, power by electricity and by gas," but the clause was amended on the suggestion of the Government to exclude gas companies from the control of the Commission.]

3° The Commission might, if authorized by the Government expropriate power plants and transmission lines and develop and transmit electrical energy to municipalities, distributing companies and to railway companies.

4° Municipalities obtaining electrical power from the Commission were required to repay the Commission the cost of the necessary works, the money for which was to be raised by the Government and expended by the Commission.

5° Municipal Councils were required previous to making a contract with the Commission to submit a by-law to the electors. The contract was to be subject to approval by the Government.

6° The Conmee Act [an Act limiting the powers of expropriation by municipalities] was declared not to apply to municipalities obtaining power from the Commission.

7° The Commission was given full powers [the consent of the Government being previously obtained] to take lands, etc., in the same manner as in the case of the Minister of Public Works.

8° In addition to the price payable by any municipality, it was required to pay its proportion of the following charges: (a) Interest at 4 per cent on moneys paid by the Commission on Capital account; (b) an annual sum sufficient to form in 30 years a sinking fund for the retirement of the securities issued by the Province, i. e., cost of operating, maintaining, repairing, renewing and insuring works.

9° The Commission was required to account to the Government for all moneys received.

10° Complaints made by municipalities or against municipalities will be dealt with by the Commission.

11° Municipalities are subject to a penalty of $100 for disobedience of an order given by the Commission; and any company refusing to furnish information to the Commission was subject to a similar penalty.

12° The Government is authorized to raise by loan on the credit of the Province the sums required for the purposes of the Act.

In introducing the Bill, Mr. Beck simply explained its provisions briefly. He admitted that under then "existing agreements with the companies at Niagara Falls, Canadian consumers were assured of as low rates as are charged in the United States." And he stated that if the Government was prepared to enter into negotiations with a group of capitalists by whom it had been approached, this group "would undertake to develop and transmit power at the prices mentioned in the reports of the Hydro Commission." "That meant that if

the Commission said power could be delivered at Toronto at $17, the company was prepared to take the contract." He said also that "the present companies (at Niagara) would absorb the whole of the present supply." "Under the existing arrangements the companies were permitted to export one-half of the power supply." . . . "He hoped that the whole of the 36,000 ft. would be available for Canada when required."

The extremely moderate and plausible tone of the speech in which the Bill was introduced was very noticeable. Although the powers given to the Commission were wide, there was no suggestion that they were otherwise than permissive. Nothing could be done by the Commission without the approval of the Government.

The Premier (Mr. Whitney) said that the Act gave the Hydro Commission power to fix a reasonable rate and if the generating Companies refused to accept that rate, then the Commission had power to expropriate. He believed that the object of the Bill "would be arrived at without drastic measures on the part of the Government being necessary. He believed that the Government would be able to carry out its scheme to the satisfaction of reasonable producers and reasonable consumers and that expropriation would not be necessary."[1]

The form of phrase in this speech showed that

[1] *The Toronto World,* May 8, 1906.

the Premier regarded the Hydro as a Department of the Government. He evidently did not think of it as being under the control of the Municipalities and still less as being likely to exceed the powers conferred upon it or as being likely to act in an irresponsible fashion. There were criticisms of the Hydro schemes and many technical, economical and legal difficulties were anticipated, but that which actually happened was not foreseen, or at all events, not publicly anticipated by anyone.

It was not to the interest of Sir James Whitney to alarm the rank and file of the Conservative Party whose leader he had just become, and by whose votes he was placed in power. He therefore gave repeated assurances publicly in the Legislature[2] and privately to the representatives of the generating Companies that the rights granted to these Companies by the Government would not be withdrawn. He held up his hands in horror when interference with "vested interests" was suggested. A Conservative Government could never commit such an offence.[3]

From a financial point of view also, the approach was very gradual. Sir James Whitney said that he did not believe that so much as $10,000,000

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[2] As for example in the debate on the Bill in the Provincial Legislature, May 8 and 9, 1906, see *Globe, Mail* and *World*, Toronto, May 9 and 10, 1906.

[3] This information was given to the writer at the time by one of the legal advisers (afterwards on the Bench) of the generating Companies.

would have to be borrowed, but if such a sum were required, he supposed that it could be found. Sir Adam Beck was similarly conciliatory and modest in his demands in the early stages of the Hydro. He gave the most modest estimates of cost. The Commission was going to arrange amicably with the generating Companies and almost from the beginning the returns were going to be sufficient to cover the whole cost.

Possibly both Sir James Whitney and Sir Adam Beck really believed that the estimates of the Hydro were not likely to be exceeded; possibly they both believed in their own optimistic speeches. The stock and bond market, however, took fright. The shares of the generating Companies began to fall and soon the shares could hardly be sold at any price. Even the bonds were at a heavy discount. The Government of Ontario had already cancelled a contract when cancellation seemed to be profitable to the Government;[4] it might very easily cancel another. Thus soon after the Hydro Commission was appointed, the effect upon the credit of industrial enterprises in the Province began to make itself manifest.

Yet the Government was able to hold its head high. The Municipalities were behind the Hydro

[4] See The Florence Mining Company versus The Cobalt Mining Company 1909, 18 Ontario Law Reports p. 275. The Privy Council decision in this case was given in 1910, see 43 Ontario Law Reports p. 474.

and behind the Government. The Conservative rank and file might be otherwise propitiated. Thus the official blessing of the Conservative Government and of the Conservative Party was given to the Hydro and all the forces of political conservatism were behind the Hydro.

The Act was passed and the Hydro Electric Power Commission was erected as a permanent body, not identical with but partaking in general of the character of a Government department. The Municipalities had been anxious to get control of the Commission but they were unsuccessful; the Government created the Commission and so far as legal provision could go, the Government intended to control the Commission. Providence arranged otherwise—the Commission controlled the Government.

The Hydro was at once the consequence of a change in the political complexion of the Ontario Legislature and the cause of further changes. For thirty three years up till the year 1905, the Province had been ruled by a succession of Liberal Governments. During that period, according to the well instructed account of Sir George Ross who was a member of the Legislature for twenty five years and head of the Government for five of these years, the Ontario Legislature "perhaps unconsciously, was incurably conservative."

It nearly always made two bites of a cherry. To extend the franchise, except in the most begrudging man-

ner, or to erect a public building until driven to it by the direct necessity, would mean a prolonged discussion or a vote of want of confidence. Notwithstanding this chronic conservatism, the members of the Ontario Legislature were men above the average of their class in ability.[5]

This description is no doubt colored by a party point of view, but it is fundamentally true. During the whole of the period of Liberal Administration the Ontario Legislature was an extremely conservative body. Every project that was brought before it was tested and debated thoroughly before it was either rejected or accepted. The members of successive Liberal Governments were educated men who were accustomed to treat seriously and intelligently the political problems with which they had to deal; and they were good debaters.

When the long period of Liberal rule came to an end in January, 1905, the end came chiefly because the people had made up their minds that "it was time for a change." There was a change. The long period of opposition against a series of Liberal Governments highly conservative in their policy and much devoted to circumspect tradition in their practice had bred in the ranks of the Conservative opposition antagonism to Conservative principles. Mr. (afterwards Sir) William Meredith had been the leader of the party for some years, and being leader of the Opposition felt obliged to oppose him-

[5] Ross, Sir George W. *Getting Into Parliament and After*, Toronto, 1913, p. 196.

self to the highly Conservative legislation of his Liberal opponents. Sir George Ross in his account of him regards as "his greatest defect," "want of skill in the game of politics."[6] Probably this want of skill it was which prevented him from realizing that the sound political course as leader of a Conservative party was not the abandonment of the principles of that party such as they were. These principles had apparently been appropriated by the Liberals; but that circumstance did not extenuate betrayal of the Conservatives by their leader. Sir George Ross says of him that "he was more radical than the leader of the Government," i. e., of the Liberal Government. He retained his position as leader of his party because he was understood to have "made personal sacrifices for many years" to serve his party. "Turbulent" and unconciliatory as he was in debate, he probably served his party better in opposition than he could have done as head of a Conservative Government.

An opposition leader who has never had experience of the responsibility of political power inevitably acquires an anti-governmental attitude. In Mr. Meredith this attitude was exaggerated under the provocation of prolonged opposition into an attitude, revolutionary and even anarchic. Perhaps owing to familiarity with legal procedure especially in civic affairs (he had been city solici-

[6] Ross, Sir George W. *Getting Into Parliament and After*, Toronto, 1913, p. 195.

tor for London, Ontario, and for Toronto), Mr. Meredith frequently expressed his contempt for that procedure. That he was ever aware of the tendencies of his mind and of his political action is extremely improbable. He was obsessed with the idea that he knew better what was good for people than they knew themselves. The Dominion Conservative Party managers rewarded him for his services as leader in the local House by appointing him Chief Justice of the Court of Common Pleas Division of the High Court of Justice of Ontario; and he was succeeded in the leadership by Mr. (afterwards Sir) James Whitney. When he went upon the bench, Sir William Meredith did not cease to mingle in politics, although it would have been improper for him to do so openly. He was mentor and confidential adviser of two successive conservative premiers, both weaker men than himself—Sir James Whitney and Sir William Hearst. If the arbitrary acts of both the administrations were not actually suggested, they were certainly approved by him. These acts were indeed altogether in accordance with Sir William Meredith's customary view of the relation betwen the Government and the people. To him the Government was not the servant or trustee of the people; it was the master of the people. He had no sympathy with or respect for democracy. In a political sense he was neither Conservative nor Radical. That he possessed legal ability and that he employed this

in guiding the Conservative Party in the Province into courses having the character of dictatorship is indisputable.[7]

The other person, also from London, Ontario, who acted as gratuitous adviser of Sir James Whitney, was Mr. Adam Beck to whom was given a place in the Ministry, without portfolio. He had been engaged in the business of cigar box making in London, Ontario, and had become known to the public through his exhibiting horses at agricultural and other shows. He was not regarded as a politician of importance until he was taken up by the enthusiasts for municipal entrance into the industrial field. They made use of him and they succeeded in developing in him an aptitude for making declamatory speeches in which he avoided all technical and economic discussion of technical and economic problems and devoted himself to unrestrained abuse of his critics. He habitually wore an injured air and complained of the persecution to which he was being subjected, while all the time he was arrogantly demanding from the Government more and more money for his schemes on the ground that his support by the public was universal and powerful.

[7] Sir William Meredith died in 1923.

VII

THE HYDRO-ELECTRIC COMMISSION
SECOND PHASE

II

Control of Supply and Distribution of Power
Intensive Political Propaganda

UNDER the Act of 1906, the Hydro-Electric Power Commission was empowered to fix the rates chargeable by generating and distributing Companies. In the event of the Companies refusing to accept the rates fixed by the Commission, the Commission was empowered with the consent of the Government to expropriate the plants. *The Mail and Empire,* the leading Conservative newspaper in Toronto, was careful to say after the Act was passed, that:

> Those who describe Mr. Beck's Power Bill as hostile to capital can have made but a hasty examination of it. A closer acquaintance with it will convince even those predisposed to adverse criticism of the sincerity of its author's intentions toward all concerned. And we believe those fair intentions will be realized by the provisions of the bill. It will turn out as it was designed to be a measure of symmetrical reform—equitable towards power producers, transmitters, distributors, consumers, and the province.

In the same article, *The Mail and Empire* con-

trasts the policy as indicated in the Power Act with the recommendations of the Municipal Commission. Mr. Beck

> did not, for example, adopt the recommendation to proceed without regard to existing power companies. . . . The Beck bill does not thus stride over the claims of existing companies. . . . It leaves to private companies the opportunity to do all the power business on the market; and so long as they are satisfied with a reasonable profit and deal justly with all consumers, the Hydro-Electric Commission will not interfere with them. It will leave them in possession of their franchise, their works and their power. So long as they adhere to fair rates it will have no cause to carry its regulative functions to the length of expropriating any power company's plant. But it is to be the judge as to what rates are fair. . . . Rates will not be cut down by the Commission below a fair level.[1]

Such were the plausible assurances by means of which the rank and file of the Conservative Party were induced to support the Hydro Bill and to secure its passing in the Provincial Legislature.

The ceremony of laying the cornerstone of the power house erected by the Electrical Development Company had been fixed for May 8, 1906, at the very moment when the Power Bill was being discussed in the Legislature. At this ceremony there was a representative assembly and almost all the speakers referred in a tone of anxiety to the possible outcome of the legislation. The Lieutenant-Governor of Ontario, Sir William Mortimer Clark,

[1] *The Mail and Empire*, May 11, 1906.

who performed the ceremony, in the course of his speech, said:

> I am prohibited from referring to politics. But I may state that I sincerely trust that these gentlemen [the promoters of the Electrical Development Company] will be permitted to enjoy the legitimate fruits of their enterprise.

In spite of the cautious character of this statement, the Hydro newspapers pounced upon the Lieutenant-Governor who was, of course, unable to reply to them, and accused him of having exhibited political bias. This accusation showed very clearly two things; first: that the Hydro was a political issue; second: that whatever might be the understanding and the desires of the Conservative supporters of the Hydro, the promoters of it from the beginning had confiscation in their minds. If this had not been the case they could have had no objection to the hope that those who had found the means to construct the plant of the Electrical Development Company "might be permitted to enjoy the legitimate fruits of their enterprise." It is evident that the Hydro promoters had every intention of preventing the enjoyment of any fruits whatever from the enterprise which had been carried out by the explicit consent of the Government.[2]

While the Lieutenant-Governor was obliged to

[2] The Premier, Mr. Whitney, felt himself obliged to vindicate the Lieutenant-Governor and "to shoulder all responsibility for His Honor's utterances." *Toronto World,* May 15, 1906.

express himself cautiously, no such embargo could lie upon the other speakers. Mr. B. E. (afterwards Sir Edmund) Walker, President of the Canadian Bank of Commerce, after speaking of the advantage to a country of the possession of men of "expert ability and enterprise for the carrying out of important works," said:

> These are not the kind of works which it is given to commissions and to politicians to carry on. . . . These men [referring to those who are willing to spend their energy and money to develop the natural resources] make capital see the opportunities here for investment. And yet the people who admire them would like, without their expert ability and enterprise, to realize the same thing. We know that this kind of public ownership, applied to a problem so intricate, is as useless as the breath of the politician who advocates it.

Another speaker, Mr. W. R. Brock, spoke in the same strain:

> Little politicians went around the country trying to make political capital out of the cry against them [those who had carried out the enterprise]. But the best sense of the people of Ontario would still stand by the men who took hold of schemes full of risk, but with great possibilities for the country, and carried them to a successful issue.[3] . . .

In these speeches, the energy of the politicians was somewhat unduly underestimated. Whatever may be the eventual issue, the politicians did as a matter of fact, afterwards follow in the footsteps

[3] *The Toronto World*, May 9, 1906.

of the promoters of the Electrical Development Company and constructed a larger plant than they did. Whether or not their activities will result in permanent advantage to the people of Ontario is another question.

On December 20, 1906, electrical power from Niagara first reached Toronto. This was accomplished by the completion of the generating plant and transmission lines of the Electrical Development Company.[4] Meanwhile, Mr. Beck had begun his agitation in Toronto for a contract between the Hydro-Electric Power Commission and the City of Toronto for the supply of power to Toronto. This power was to be purchased by the Commission at Niagara Falls, and a transmission line in competition with the line which had just been erected was to be erected by the Commission to convey the power to Toronto. On December 20, Mr. Beck addressed a public meeting in Toronto. His arguments were summarized at the time as follows:

1° A saving of at least $500,000 per year would be made.
2° Every citizen will benefit.
3° There will be given an immense impetus to industrial development in Toronto.
4° The enterprise will be from the first on a self-supporting basis. The users of power or light will bear all the expense.

[4] *The Globe, Toronto,* December 21, 1906.

5° There will be no danger of an interrupted service and an auxiliary steam plant to meet emergencies will not be necessary.[5]

A By-law to permit the City Council to enter into a contract with the Hydro-Electric Power Commission was passed on January 1, 1907. Only proprietors of land and buildings can vote on such By-laws. The vote was not large. The By-law was carried by 10,959 for and 2,886 against.[6] There was a majority in every ward in the City. At the same time, three other By-laws were presented—one, represented by the sanitary authorities as very necessary, was for a trunk sewer; another was for a bridge; and the third was for a new entrance to the Toronto Exhibition Grounds. The last mentioned was doubtful, but the first two were important and much needed public improvements. They were all rejected. The Mayor remarked that the people while they had passed the Hydro By-law had smashed the other three By-laws "through ignorance."[7] Perhaps the ignorance extended also to the By-law they passed. *The Globe* attributed the passing of the Hydro By-law to the pressure of the newspapers. The Mayor was opposed to it until "the spur of the press was applied."[8]

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[5] *The Globe,* Toronto, December 21, 1906. The Hydro-Electric had to rely for years upon the steam reserve of the Toronto Electric Light Co., its competitor. A steam reserve plant costing $5,000,000 is about to be installed (May, 1925).

[6] *The Globe,* Toronto, January 2, 1907.

[7] *The Toronto World,* January 2, 1907.

[8] *The Globe,* January 2, 1907.

Whenever the By-law regarding the contract with Toronto was passed, the Hydro embarked upon a new phase. The Commission determined to build a transmission line and to convey electricity from Niagara in competition with the Electrical Development Company, whose line had just been completed. That line could have served all the purposes of transmission to Toronto, yet the Hydro Commission notwithstanding its protestations of a short time before had decided to do the very thing it had disclaimed. To carry off this scheme and to conquer any public disapprobation and any opposition on the part of the Government from which the Hydro was under the necessity of obtaining funds, a plan of action was necessary. It must be allowed that this plan was dexterously manipulated. Whatever opinion may be formed about the Hydro administration of its electrical business, in the manipulation of public opinion it easily takes high rank.

The first step was to employ a large number of young men, mostly law students or engineers fresh from their colleges. These young men were ostensibly engaged for the purpose of making arrangements with the farmers and other property owners about the necessary easements.[9] Their real business, however, was to carry propaganda for the

[9] When the transmission line of the Electrical Development Company was arranged for in respect to such matters, the work was done by one person in a few weeks.

Hydro everywhere they went. They entered into conversation with everyone, made canvassing visits and addressed meetings in school houses and the like. These young men were specially selected for the purposes to which they were put and specially instructed in their duties before they were sent into the field. To small places where there was little known opposition to the Hydro policy, a group of these propagandists was sent in the earliest stages of the propaganda. They succeeded in working up enthusiasm. They managed to have By-laws in favor of the Hydro introduced in the local municipal Councils, and when the votes upon the By-laws were taken they marched their voters to the polls and carried the By-laws. Where more difficult situations had to be attacked, the Commission used more men, used them longer and used other agencies as well. Thus at Hamilton some fifty young men were employed for weeks in an assiduous canvass, and all the pressure which could be brought to bear through the Conservative Party organization was used to carry the By-law in the teeth of the opposition which had been aroused by the Hydro movement.

When the field of patronage was enlarged by the growth of the Hydro business, the Hydro employed still larger groups of men who were expected and required to extoll the Hydro at every opportunity. When the Hydro took over an enterprise, it took over the staff of that enterprise. If the members

of the staff did not care to adopt Hydro methods, they could easily be replaced. Numerous additions to the staff were made and every addition meant not merely a vote for the Hydro but a fresh canvasser for more votes. The manager of one of these absorbed enterprises in answer to a remark of the Chairman of the Commission to the effect that while formerly the Company had always been able to pay a small dividend, now the earnings were insufficient to meet operating expenses, replied: "Look at your overhead!" The policy of overstaffing its offices and its plants has been deliberately pursued by the Hydro-Electric. It is improbable that an estimated excess of 50 to 60 per cent in the number of employes would be found to overstate the case.

The utilization of the Hydro-Electric staffs, not merely in the direct service of the Commission but also in the service of the Municipalities, has placed a large and widespread canvassing agency at the disposition of the Hydro party at the expense of the Province and of the Municipalities. This agency is used most actively in elections, but at any time it may be brought to bear upon a recalcitrant Government or a hostile local critic.

The chloroforming of the press is not less ingenious and well-organized. The Conservative press must support the Hydro if not in every detail, in principle, because the Hydro supports the Conservative Government and keeps it in power.

The Liberal press supports the Hydro because to attack it as a scheme of the Conservative Party, which it was, would under existing conditions be fruitless and because the Liberal newspapers in general have deeply committed themselves to a policy of "public ownership" although the meaning attached to that expression and the extent which "public ownership" is advocated are variable. The path is thus smoothed beforehand for Hydro propaganda; but nothing is left to chance. Editors and reporters are assiduously cultivated. They are kept supplied with information of a kind. They are even mysteriously and confidentially "consulted," as if their opinion was the most valuable which could be obtained. On ceremonial occasions, and full advantage is taken of opportunities for these, transportation and hospitalities are provided for such press men as the Hydro Commission is pleased to approve.

The Hydro movement has from the beginning been engineered with skill—from a certain point, with very great skill. While the personal share in the movement as visible head and chief advocate on public platforms of Sir Adam Beck was undoubtedly great, no one person can be credited with the Hydro policy or with the carrying of it into practice. The Hydro Commission has never had upon it, since the resignation of Sir John Hendrie, any person of technical experience, of important legal experience, or of experience in large

enterprises. Sir John Hendrie was the first and the last who had any one of these qualifications and no other member of the Commission can be credited with the possession of any of them. In addition to the forms of experience mentioned there was necessary in the case of the Hydro Electric Commission for the functions it had chosen to assume a particular variety of political management by means of which it might be able to secure itself firmly in its position. This variety of political management was probably exercised chiefly by the Chairman of the Commission, Sir Adam Beck, although events do not seem to warrant the conclusion that he was unassisted or unadvised. On the contrary, there can be no doubt that in the early stages of the Hydro movement and more or less continuously later, he was acting under the advice of shrewd and experienced municipal politicians in the City Council of Toronto. Many of these were extremely familiar with the most effective means of "educating" public opinion and of securing for themselves the continuous support of decisive majorities at the polls.

There can be no doubt that from these capable political schemers, the Chairman of the Commission acquired the most fruitful of his ideas for the organization of the Hydro movement. They brought him into touch with similar persons in the Provincial Municipalities. Thus there grew up a relation of mutual aid. The municipal poli-

ticians assisted the Hydro and the Hydro had means of rewarding its friends either by conferring benefits upon the communities to which they belonged and from which gratitude towards them might be expected, or by benefits of a more direct and personal order.

Beyond the mechanism by which positive action was taken in order to realize the aims of those who advocated the Hydro plans was the acceptability of these aims to a large group of the public. Emphasis was laid upon the slogan "cheap power"; but the desire for cheap power was by no means the only, and perhaps never was, the chief motive. For some years there was perceptible a drift in certain circles of public opinion towards what the late M. Albert Métin, at the time Minister of Labor in France, called aptly *"socialism sans doctrine."* This non-doctrinaire Socialism or Collectivism in practice without advocacy of Collectivist theory had made great headway in Australia, and some headway in Great Britain, especially in the municipal Governments — as well as some headway in Canada. So far, it has not made much, although it has made some headway in the United States. In Canada there were many who advocated the nationalization of the railways and the building of Government railways by the Dominion and the Provinces. They advocated also the establishment of Government steamship lines, etc. The people who advocated these measures or approved them

when they were taken by the Provinces or by the Dominion were outraged when they were described as State-collectivists or less precisely, State-socialists. Yet State-collectivism is what they were practicing by whatever party name they might choose to call themselves. Such persons, and they were very numerous throughout Canada, saw in the acquisition of a railway or two by the Government an ordinary affair of business, but nevertheless, to them, a desirable affair, in which the profits of transportation might be directed into the public treasury instead of into the pockets of "rich capitalists" residing perhaps to the greatest extent abroad, in Great Britain, where most of the money for the Canadian railways had been found—France, Holland or Germany. It did not strike them that there might be no profits under Government operation and that the operation of the railways might be as great a burden in Canada as it had been discovered in two widely separated periods to be in Italy, and as it was being found to be in Australia. Nor did such persons realize that the effect of Government operation of railways might react very unfavorably upon all private enterprises whatsoever, including their own. Even when continuously recurring deficits on the railways and when continuously recurring "mistakes" in the estimates for construction purposes were disclosed, these people remained oblivious to the fact that their own resources and the general pros-

perity of the country were dwindling because of "nationalization of the means of transportation" and because of their avowed or tacit assent to non-doctrinaire Socialism.

Those who adopted towards "public ownership" the attitude described were obviously unaccustomed to precise examination of questions of that sort, or of any sort, and accustomed to accept at their face value the statements of those who pretended to know about them. Upon such an uncritical section of the public the Hydro-Electric Commission relied—and not without reason.

Among the group which has just been described there were large numbers of persons who regarded themselves as Conservatives in politics. For conspicuous instance, Sir Robert Borden, leader of the Conservative Party in the Dominion House while he was in Opposition, proposed that the Government should bring in a Bill to nationalize all railways. Coming from such a quarter, the proposal was strange but significant. It is extremely unlikely that Sir Robert Borden had studied the subject of national operation of railways, otherwise he would have discovered that in no country had the advantage of such a measure been proved and that on the contrary serious economic losses and political consequences had attended railway operation by Governments. Yet he was undoubtedly aware that a vague idea of the advantages of "nationalization" was in the minds of his Conser-

vative constituents and that he risked no unpopularity in the course he pursued. Nor did he do so. Within a short time afterwards he was returned to office as Prime Minister of Canada.

The Liberal Government at the time when the proposal was made was not prepared for so drastic a step and Sir Robert Borden's proposal was rejected. Ill-considered projects like that of Sir Robert Borden, even although these happen to be strangled in their birth, are responsible for much of the equanimity with which the Conservative public of Canada, and most of all, of the Province of Ontario have regarded the whole question of "public ownership." The public has not realized the decline in the general prosperity of the country which must be accelerated with every adoption of a "public ownership" scheme and even with every suggestion in important quarters that a scheme of this nature should be adopted.

The nationalization of a portion of the Canadian Railway system, partly by the Liberal Government of Sir Wilfrid Laurier and partly by the Conservative Government of Sir Robert Borden has plunged Canada into an enormous debt for enterprises which have proved not merely to be unremunerative but to have resulted in an aggregate loss amounting to hundreds of millions of dollars.

When it began its campaign, the Hydro Commission knew that it could count upon a public opin-

ion in both the political parties which was already predisposed to the support of any "public ownership" enterprise. Public opinion was ill-instructed and blind to the economic and political consequences of such projects, but these facts rendered it more easily bent to suit the purposes of the Hydro Commission.

Apart from the support which the Hydro counted upon and received from the normally stable and non-subversive elements in the community—elements which would have repudiated any suggestion of Socialist tendencies—there were other elements not so stable who found that the aims of the Hydro Commission so far as these went, coincided with their own aims avowedly subversive, as these were, of the social structure.

The more extreme groups may be divided into three sections. The *first* section and perhaps the section most favorably situated for the exercise of influence was and is composed of certain members of the clergy in more than one denomination; but conspicuously as it now appears in the Methodist Church which for many years has been very strong in Ontario. That there had been growing in that Church, by insidious approaches, an opinion among certain of its clergy in favor of political action having in view the complete subversion of the social order, became apparent in 1918 when at a conference of the Methodist Church in Canada, held in Hamilton, Ontario, in that year, a resolu-

tion embodying the following remarkable program was passed by the conference. This program became the official program of the Methodist Church in Canada. It cannot be supposed that all of the clergy and still less all of the laity belonging to that Church would or could give their adhesion to this program, but the significance of the fact that it was passed by the highest court of the Church cannot be overlooked. The question assumes special significance now that the Union of the Methodist, Presbyterian and Congregational Churches in Canada has been carried into effect. This Union has resulted in a heated controversy between two parties in the Presbyterian Church—one accepting and the other rejecting the Union. When the Union is consummated, the question must arise, what attitude will be taken by the adhering Churches to the program of the Methodist Church? The program in question has nothing whatever to do either with theology or with church government. It is a purely gratuitous invasion of the sphere properly belonging to the civil power or to the inhabitants of the country considered as possessors of civil rights. It is an attempt to set up an authority on civil affairs in opposition to and in active hostility against the civil Government of the country. Leading lay members of the Methodist Church are presidents of banks and other financial institutions, many are at the head of large businesses and many look upon themselves as being

among the "pillars of society." Some of these are understood to regard the program with amused indifference. "Let the clergy try to carry that program out," they say, "and then they will see where they are." Meantime the section of the Methodist clergy infected with the ideas expressed in this program are no doubt instilling them into the minds of their congregations and thus exercising a widespread influence of a highly subversive and dangerous character.

Throughout Europe there is little doubt that for the time at least Socialism has received its quietus, in spite of the Socialist form of some of the Governments. The Socialist Parties wherever they have succeeded in exercising any influence have broken into fragments over doctrinal disputes and the consequences have been ruinous to the various experiments which have been made. If Canadians allow themselves to be guided by influences such as those which have been indicated, they may have to go through the years of suffering which every nation in Europe has endured where Socialism has been permitted to fasten itself upon the government.

The program of the Methodist Church in Canada is as follows:

Social and political program of the Methodist Church of Canada, approved at the Tenth General Conference held in Hamilton, Ontario, in 1918:

1° Nationalization of all natural resources, such as mines, water powers, fisheries and forests.
2° Nationalization of the means of communication and transportation and the public utilities upon which all the people depend.
3° Condemnation of speculation in land, grain, foodstuffs and natural resources.
4° Enactment of legislation which shall secure to labor a fair wage adequate to a proper standard of living, to business a fair profit adequate for its continuance, and to the public all returns in excess of these.
5° Forms of industrial organization should be developed which call labor to a voice in the management and a share in the profits and risks of business.
6° The obligation under which we live in dealing with such vital issues as land tenures, taxation, housing, city planning, systems of insurance and industrial, economic and fiscal control, etc., demand that the life interests of the mass of the people must in every case transcend the class or an individual group of individuals in profits or property.
7° Parents must still further protect their children by better socializing and organizing community life, in the better school movement, the community center organization, etc.[10]

This program is distinguishable from that of the Third International in quite unimportant details. The latter program is more explicit in respect to the matters referred to in paragraph six of the Methodist Program. Both programs show that their framers are oblivious of the forces of human nature which fortunately for the human race ren-

[10] A copy of this program is to be found in Moore, W. H. *The Commandments of Men*, Toronto, 1925.

der the carrying out of such a program an impossibility. The Third International has attempted to impose its program upon the world. The same program has actually been imposed by the Communist Party upon the Russian people. After sacrificing an incalculable number of millions of lives through the civil war, disease and famine, all the direct consequences of the Communist program, the terms of it have been practically abandoned.

The program of the Methodist Church was promulgated a few months after the Bolshevik Revolution in Petrograd of October, 1917. By what means were the principles of Bolshevism so quickly communicated to the younger clergy of the Methodist denomination and so quickly absorbed by them?

Unless the Methodist Church places a check upon insidious and subversive propaganda within its own courts, its loss of spiritual influence in the Canadian communities is certain.

The *second* section of the extreme groups is the Trade Union section. Although the Trade Unions at their annual Congress have frequently announced themselves as favorable to Government ownership, they have not taken any prominent part in the controversy. Some members of the Trade Unions are at least lukewarm on the subject, because they are by no means sure that their present freedom to make or not to make wage contracts would not be encroached upon by Government ownership whenever it was applied. A recent

strike in the Post Office revealed a great amount of dissatisfaction with Government rates of wages, and difficulties have also arisen in connection with labor on the Government canals. Since wages in the Government service are, under the present system, determined by the Government, the functions of the Trade Unions, in so far as wage agreements are concerned when and where Government ownership is applied, are forthwith at an end.[11]

Unless the whole system of determining the wages of persons employed by the government were altered, in the event of further adoption of government ownership, the Trade Unions would find themselves without an office. Nevertheless, in general, as is usual in such cases, there is a considerable body among Trade Unionists which would support any scheme for expropriation by the Government of private property for any purpose whatsoever.

The *third* extreme group is the Communist Party. This party not wholly but largely composed of continental European immigrants has already raised its head in Winnipeg. It practically controlled the city from May 20th to June 1st, 1919. The story of that example of "Sovietism" in Canada is extremely instructive but it cannot be told at length here. The Communists brought about a general strike. The newspapers, excepting

[11] The relations between the Hydro and Labor are discussed in a later chapter.

the Communist newspapers, were suspended and the life of the community was sustained with great difficulty. The authorities, Dominion and Provincial, as well as the inhabitants of Winnipeg, fortunately conducted themselves with patience and forbearance. The rising collapsed without the loss of innocent lives which would have been inevitable had a less wise course been pursued. In this case two clergymen were implicated. One of these is now leader of the Canadian Labor Party. It was alleged that the movement at Winnipeg was subsidized by funds from Soviet Russia, but a judicial inquiry established that there was no ground for such an accusation. The movement arose from a conjunction of local causes together with external causes affecting the world at that time. The principal lesson the Winnipeg general strike conveyed was that a comparatively small number of men, if they have courage enough to take their lives in their hands, can bring within a few hours an organized community back to the conditions of primitive life. A second lesson is that such action by a small number of persons may, if they can hold their position for even a short time, effect an alteration in the whole social system of the region—an alteration which may be permanent. Another lesson is that the sentimental and ecstatic advocates of social change are not the persons to carry that change into reality.

Immediately after the Hydro Commission was

appointed, it began to incite the Government to worry the generating companies by making unreasonable demands upon them, as for instance the demand that the rentals payable yearly to the Government should be determined by the peak, and not by the average power. The Government also demanded rentals in respect to the total quantity of power generated irrespective of whether the power was sold or not. There were three generating Companies at Niagara: The Canadian Niagara Power Company, The Ontario Power Company and the Electrical Development Company. The two former Companies were essentially American enterprises—the head office of the first was in the City of New York, and that of the second was in the City of Buffalo. The Electrical Development Company was formed in Toronto where its head office was situated and the capital invested in it was wholly subscribed in Great Britain and Canada. The plant was just being finished and the Company was about to begin the supply of electrical power when the Hydro-Electric Power Commission was created by the first Hydro Act of 1906. Instead of waiting even for a short time to see the effect upon the market for power of the introduction of a new competitor and instead of waiting to see what might be the economic results of the transmission of power by high tension on long lines, the Hydro Commission decided to utilize its powers at once. Any intention to exercise these powers

immediately or drastically had been expressly disclaimed by the Government. Yet the Hydro Commission would brook no delay. It called for tenders from the power Companies holding franchises from the Government. The Hydro Commission induced about thirty Municipalities to secure a vote upon Hydro By-laws at the municipal elections on January 1, 1907. In Toronto, a typical case, the following were the terms of the By-law:

> That it shall be lawful for the said Municipal Corporation to enter into a contract with the Hydro-Electric Power Commission of Ontario for the supply to the said Corporation for thirty years of 15,000 continuous horsepower or more of electrical power and energy for the uses of the Municipal Corporation and the inhabitants thereof, for lighting, heating and power purposes, at from $14 to $18.10 per horsepower per annum for continuous power, ready to be distributed by the said Municipal Corporation; such price to include all charges for interest, sinking fund, for cost to construct, and the cost to operate, maintain, repair, renew and insure the plant, machinery and appliances to be used by the said Commission.

The terms of this By-law were in violation of the Hydro Act (1906) which had been passed a few months earlier. Under that Act

> The Commission was authorized to sell power to any municipality, which should first approve by vote of the ratepayers of a By-law authorizing a contract, estimates of the cost of the power, and specification, and of a provisional contract setting out the exact terms of the contract to be entered into.

The terms of the By-law were general and not "exact"; and neither estimates nor provisional contracts were submitted.

All the By-laws were carried. A few months later (in April, 1907) at the close of the second session of the Whitney administration (Conservative) a second Hydro Act was passed. This Act amended the Act of the previous year in some respects; but no change was made in respect to the form of the By-law prescribed to the Municipalities.

In 1907 the Electrical Development Company had an already developed market for the power it had intended to produce. The Toronto Street Railway and the Toronto Electric Light Company were ready to take the power. The Ontario Power Company was not transmitting its power to a distance on the Canadian side. Much of the power developed by it was utilized locally on the American side and another portion was distributed in the surrounding places. The Canadian Niagara Power Company was in the same position. The absence of industrial development in the vicinity of the Falls on the Canadian side had resulted in the export of power to the industrial centres on the American side.

In May, 1907, a contract was made between the Hydro Commission and the Ontario Power Company under which upon notice being given by the Commission the Company would supply and the

Commission would take all the horsepower demanded by the Municipalities at $10.40 per horsepower at Niagara Falls.

This contract gave a monopoly, so far as the Municipalities within the Hydro group were concerned, to the Ontario Power Company. After long negotiations, the Electrical Development Company agreed to accept the price indicated in the contract with the Ontario Power Company. The Government then proposed a geographical division. The Ontario Power Company was to supply all power to the Municipalities west of Hamilton, while the Electrical Development Company was to supply all power to be taken by Municipalities east of Hamilton. The Government added the condition that the Company must not sell power at Niagara Falls and must abandon its project to develop an industrial centre at Chippawa or at any other part of the province excepting the City of Toronto. Had the Electrical Development Company agreed to this condition, it would have been shut off from selling its power anywhere but in Toronto. It is true that City constituted its principal initial market, but the project of an industrial Chippawa had from the beginning been part of the plans and the Company was reluctant to abandon it. The method adopted by the Hydro-Electric Commission in these negotiations was characteristic. After the Commission had announced that a contract had been concluded with

the Ontario Power Company, the Commission summoned the Electrical Development Company before it in May, 1907, and informed the Company that a territorial district would be assigned to it and that at a later date the Company would be informed what minimum of power would be fixed by the Commission. Nothing was done until September 23rd, 1907, when the following extraordinary proposition was made by the Commission:

1° The minimum quantity of power to be paid for whether taken or not by the Commission was to be 2,000 E.H.P. [The Ontario Power Company had a similar minimum of 6,000 E.H.P.]

2° Whenever the Commission shall have called for more than 60% of the power then being generated, the Government is to be entitled in case in the opinion of arbitrators there is continuous neglect in the service, to forfeit the whole plant of the Company and take it over from the Company.

On September 26th, the Government invited the directors of the Electrical Development Company to a meeting and told them that the following further proviso had been added to the agreement originally proposed three days earlier:

The Company will not directly or indirectly deliver power to any person or corporation that it is intended shall be supplied by the Commission in that part of Ontario colored red upon the said linen tracing [The Ontario Power Company territory]. This clause, however, shall not be held to cover or interfere with the supply of power agreed to be delivered by the said Company to any person or corporations other than the Commission at the date on which the first block of power is

ordered by the Commission from the Company under this agreement, but the said supply shall continue unaffected by the agreement.

On the same day upon which the Conference was held, but after the close of the meeting, another stipulation was presented to the Company:

That the Commission may require the Electrical Development Company in the event of an agreement for the supply of electricity in the Eastern part of Ontario, to agree that the Company will not deliver power outside of the City of Toronto to any person or corporation that the Commission may intend to supply.

In a letter to the Hon. Adam Beck, dated October 4, 1907, the Electrical Development Company declined the proposals of the Government. In this letter the Company said:

The Company has been anxious to meet the Government upon some equitable basis, and has earnestly endeavored to secure terms which, while not interfering with the plans of the Government, would leave the Company free to develop and carry out its own business policy.

The Company calls attention to its original Franchise from the Government which was ratified by the present Government at its Session in 1905, wherein it is provided that, in consideration of the rentals to be paid by the Company to the Government, exceeding the sum of $100,000 per annum, the Government would not compete with the Company in the generation for sale of Niagara power, and respectfully insists that in entering into competition with this Company in the way proposed, a breach of the agreement is contemplated.

The Franchise from the Government is for the generation of 125,000 H.P. which the Company is authorized to sell in the Province of Ontario and in the United States.

If the Company were to accept the offer made, the following consequences would necessarily result:

(1) The Company would be prohibited from selling in any part of the Province of Ontario . . . with the single exception of the City of Toronto . . . it would have to abandon the whole of its contemplated business in Canada to the Hydro-Electric Commission and be forced to seek a market in the United States for all of its power, except that portion which might be taken by the Commission for consumers in the territory alloted to the Company.

(2) The Company has . . . purchased a right of way to the City of Brantford; this would have to be abandoned.

(3) The Company owns 650 acres of land within 3 miles of the Falls which it has purchased as sites for factories and industrial enterprises; that project would have to be abandoned.

(4) The plans of the Company contemplate the sale of power to railways which are to be built in the future and which may traverse the whole territory allotted to the Ontario Power Company. All this future business would be lost to the Company.

(5) The Company is already doing business in the territory . . . using only a small proportion of its total output of power . . . and it is asked to abandon the whole of the rest of its future Canadian business . . . in order to secure the sale of 2000 H.P. to the Commission.

(6) The Company has expended $8,000,000 upon the works at Niagara and its transmission lines, and in order to complete the undertaking further moneys are required; if the Company were to accept the restrictions and limitations sought to be imposed by the Government, it would be impossible to ask from anybody, anywhere, further financial aid.[12]

It is scarcely possible to believe that either the Government or the Hydro Commission had any serious intention in proposing the above mentioned

[12] From a typed copy of the letter.

agreement to the Electrical Development Company. The method of gradually increasing the number and pressure of the stipulations suggests that what was being done was merely to frighten away capital from the new enterprise, to render difficult the conduct of the business of the company and finally, when it was approaching ruin, to acquire it at a bargain price. If such was the intention of the Whitney Government or of the Hydro Commission, no credit is reflected upon either of them. They were committing gross violation not merely of agreements and pledges made by previous Governments and Commissions; but of agreements and pledges made within two years by the Whitney Government itself.

Towards the close of the legislative session of 1907, the City of Toronto introduced a Bill to empower the City to take over the Toronto Electric Light Company. It is doubtful if this proceeding was at that time in conformity with the policy of the Hydro Commission. In any case, the Premier (Sir James Whitney) stated that he considered the terms of the Bill unfair to the Company and he proposed certain amendments by which he said an equitable arrangement would be made possible.

Rather than accept the amendments proposed by the Government, the promoters of the Bill, viz., the City of Toronto, withdrew it. The Government had not otherwise shown itself to be in favor of treating joint stock corporations with clemency,

yet it found difficulties in devolving upon Municipalities the rights of expropriation and even of forfeit which it took to itself and gave to its Hydro Commission.

On January 1, 1908, there were offered to the ratepayers in the Hydro Municipalities further Hydro By-laws. The Toronto By-law provided for the raising by way of loan of $2,750,000 for a distribution plant and system in the City of Toronto to distribute the power purchased from the Hydro-Electric Commission.

As in the case of the By-law of the previous year, this By-law was voted upon in flagrant violation of the law as laid down in the first Hydro Act (1906). No estimates of cost were offered and in general the provision of the Hydro Acts were not complied with.

The illegality of the By-laws was so clear that the Commission and the Government began to realize that in the event of money being raised by means of loans, or bonds, the security of which rested in any degree upon these By-laws, the validity of the By-laws was an essential condition. For that reason the Government introduced and passed a Bill known as the Third Hydro Act in which it was declared that the By-laws were valid and legal and in compliance with the Second Hydro Act and that contracts concluded in consequence of these By-laws would also be valid and legal.

The City Council of Toronto then passed a reso-

lution authorizing a contract with the Hydro Commission at a price not to exceed $18.10 per horsepower per annum *at the City of Toronto.* In other Municipalities similar resolutions were passed by the Councils at various prices. In every case the By-laws (legalized ex-post facto) and the Resolutions of the municipal Councils authorized contracts for the supply of power at a fixed price at the place of consumption.

But the Hydro Commission produced a form of contract of an entirely different character. The contracts purport to be in pursuance of the By-laws and Resolutions; but they are not in pursuance of these because the contracts provide for the purchase of power at Niagara Falls at $10.40 per E.H.P., whereas the By-laws and Resolutions authorized a contract for power delivered at the places where it was wanted.

Under these contracts the price for delivered power is indefinite. The Municipalities are required to pay

1. Interest on the cost of construction works and transmission lines.
2. A thirty-year sinking fund for the capital expenditure.
3. Line loss.
4. Cost of operation.
5. Cost of maintaining, repairing, renewing, and insuring.

None of these items is limited in any way. The method of accounting adopted is to make a month-

ly provisional charge upon each Municipality based upon the so-called fixed price (e. g., at Toronto $18.10) and then at the end of the financial year making up a thirteenth bill in which there should be a debit or a credit according to the estimates of the finance of the year as furnished by the auditors.

It is clear from this narrative that the people of Ontario and especially those of the so-called Hydro Municipalities have been deluded into shouldering enormous and quite indefinite responsibilities. The Hydro Commission and the Government have both disregarded even the checks upon irregular action provided in their own Acts. It is doubtful if in strict reading of the law as it stands any of the Hydro-Commission bonds are legal and valid. It should be remarked, however, that if the question were contested there would no doubt be forthcoming an Act making them legal. The fact remains that the Hydro legislation has from the beginning been of an amateur character. It has constantly required amendment because of its deficiencies, and in the future there need be no surprise if prolonged and costly litigation were to arise between Municipality and Municipality and between Municipality and Government. Such litigation is likely to occur whether the Hydro enterprise results in financial profit or in financial loss.

Although nearly all of the Municipalities were persuaded to accept the change in the terms thus insidiously introduced into the contracts, there

was one Municipality which revolted. That was the Municipality of Galt, or rather the Mayor of Galt refused to sign the contract on behalf of the town, notwithstanding a resolution passed by the Town Council authorizing him to sign it. He considered, and quite properly, that the contract was not legal and valid within the terms of the relevant Acts. This incident is worthy of relation at length because it illustrates two facts of importance—one is that advocates of "public ownership" have frequently a deficient sense of the public interest, and second, that these advocates allow themselves to be carried away by phrases and catchwords and thus frequently neglect the actualities of life.

In refusing to sign the contract the Mayor of Galt took the ground that the people had voted for power at a fixed price at Galt and that he had no authority from them to sign a contract for power at Niagara Falls at $10.40 with additional sums added for various unascertained and unlimited items. After these additions the cost to the Town of Galt might be three or four times the amount sanctioned by the By-laws. A mandamus was applied for to compel the Mayor to sign the contract. The application which was heard by Mr. Justice Anglin was dismissed and the action of the Mayor fully justified in a lengthy judgment of seventeen folios in the course of which the whole

subject is treated exhaustively. The following are some of the most important passages:

> Upon examination it is apparent that the contract does not conform to the terms of By-law No. 848, in that although in a schedule attached to the contract in Column No. 5, under the heading of "estimated maximum cost of power ready for distribution in municipality," there appears opposite the name of the town of Galt the figure $22, there is nothing in the contract to make the obligation of the municipality to take and pay for electrical power and to pay its proportion of the cost of transmission to the town of Galt conditional upon the total of such cost not exceeding $22 per horsepower per annum. On the contrary, the contract purports to bind the municipality unconditionally to pay a fixed charge per horsepower for electrical energy at Niagara Falls and a proportionate share of the cost of a number of other items which is not determined. Under the terms of this contract, the town, for aught to the contrary appearing in the contract, might find itself bound to take power at a price considerably in excess of $22 per horsepower per annum delivered in Galt. . . . I think the By-law of the town of Galt No. 904 [authorizing the signing of the contract] could only be passed in breach of faith with the electorate and that the contract which it purported to require the Mayor to execute would be illegal and contrary to the requirements of the Statutes 6 Edw. VII c. 15 and Edw. VII c. 19 [the Hydro Acts]. The Mayor, in my view, was justified in refusing to become a party to the perpetration of these illegal acts. . . .

Proceedings were taken in two other cases—a ratepayer in London and one in Toronto bringing actions against the corporations of these two towns, respectively. When the cases came up, the counsel for the Municipalities objected that the actions

were improperly constituted because the Hydro Commission was not made a party to the action. Since under the Hydro Acts "no action can be brought against the Commission for anything done or omitted to be done except with the consent of the Attorney General," Mr. Justice Latchford, before whom the actions were brought, directed that application should be made to the Attorney-General to join the Commission as defendants.

An application was made to the Premier (Sir James Whitney) who was then Acting Attorney-General. The Premier fixed a day for hearing counsel (December 1, 1908) and on December 8, 1908, he gave a written judgment. The judgment is as follows:

I am expected, apparently on the mere statement of a plaintiff that the members of the Hydro-Electric Power Commission were guilty of fraud and deception as set out in the statement of claim, to assume the truth of the statement and therefore grant a fiat. Under this doctrine it would be simply necessary for a plaintiff to interject into his pleading any allegation calculated, if true, to justify the issue of a fiat, and a fiat would follow as a matter of course. As I cannot agree with this, and, as under such circumstances fiats have been many times refused, I do not see my way clear to grant these applications.

Apart from the question of fraud, the plaintiff's contention in each case rests upon the view that the municipal councils had not the power under the statute to finally enter into contracts with the Hydro-Electric Power Commission without submitting the terms of them to the ratepayers. I have personal knowledge that this was not the intention of the legislature and I cannot divest myself of that knowl-

edge. It may be that at its next session, which cannot now be long delayed, the legislature may make a declaration upon the subject.

In refusing the applications now, I reserve leave to the applicants to renew them after the opening of the session.

This judgment is very peculiar. It is quite hazy about the intention of the Legislature. Whether or not the Legislature *intended* to give the Councils powers to execute contracts, approved or not approved by the people, is not clear. In any case the intention of the Legislature was not in question. The Hydro Act contained a clause prescribing the procedure which must be adopted by the Municipalities and that procedure had not been adopted. There was no dispute about that fact. The judgment of Mr. Justice Anglin made that quite clear. Yet, Sir James Whitney ignored that judgment and without entering into the merits of the case shielded the Hydro from the attack which it had brought upon itself.

The reason for the reluctance of the Government to permit the irregularities and illegal proceedings of the Hydro to be brought before the Courts of Law is not far to seek. The character of the Canadian judiciary in general stands high and the chances of the Government or the Hydro Commission being able to employ successfully backstairs influence or open intimidation were very remote. Therefore, it was expedient to steer clear of the Law Courts. This policy has been stead-

fastly adhered to by the Hydro Commission since its beginning. It cannot bear investigation by any but a special commission of its own choosing.

In the following session of the Ontario Legislature (1909) an Act was passed in which in set terms the Mayor of the Town of Galt was required to sign the contract between the Town and the Hydro-Electric Commission, notwithstanding the fact that the Law Courts had declared the contract illegal. Probably no more ludicrous legislation was ever perpetrated by a legislative assembly in any part of the world.

The arguments employed by the Hydro propagandists are fairly represented by the following:

> The Toronto Electric Light Company are spreading the idea that the citizens generally will have to pay the $2,700,000 to be voted on in the by-law for the distribution of power. The astonishing thing is that a number of people believe such statements. No taxpayer will have to pay one cent for electric power or power plant in Toronto under the plan of the Hydro-Electric Power Commission. The cost of the debentures to be issued will be entirely defrayed by the consumers of power and by them alone. The charges will include interest, sinking fund, depreciation and all other liabilities and will be spread over a term of thirty years. At the end of that time the city will be presented with the plant, free, gratis. No taxpayer will have paid one cent towards it, but the city will gain that asset as a return for lending its credit.[13]

This argument has a familiar air. It is the argument of the confidence trick. Put money in our

[13] *The Toronto World,* Nov. 27, 1907.

hands and presto we will multiply it, give you back your own and as much more besides. You will then have wealth which will have cost you nothing, not even exertion.

The writer from which the above is quoted, went on to say:

> The electric ring (a euphemism for the Electrical Development Company which had just begun to supply power) . . . will try to convince people that power cannot be as cheaply distributed through a plant which cost $2,700,000 as through their own which cost $5,000,000 and needs another $1,000,000 now to put it in condition. They will issue pamphlets to show that it is better to pay more to a company that has to pay 8 per cent dividends than less to the city which has no dividends to pay.[14]

This also has a familiar air. The fallacy lurking in it has been exposed often but it seems to be a perennial. For whatever enterprises a city undertakes, it must obtain the capital cost of these enterprises, out of accumulated funds, out of loans, or out of taxes. The City of Toronto obtained the funds for the Hydro lighting system with which it entered into competition with the Toronto Electric Light Company over a portion of the area of the city by means of loans. For these loans the City had to pay and has now to pay interest, whether a single consumer avails himself of the lighting service or not, and whether the plant has any saleable value or not. If there is a deficit, the taxpayer must pay the interest and the principal. That is

[14] *Ibid.*

the meaning of the phrase "employing the City's credit." In the case of the Company, the plant alone forms the security for the loans raised in respect to it. If for any reason the plant has to be realized, and if the amount received for it is insufficient to pay the debt upon it, the creditor has to suffer the loss. He has no one to fall back upon. The Company does not *have* to pay 8 per cent dividends to its stockholders. If it earns 8 per cent, it may pay that amount; but if it does not earn any dividend, nothing *has* to be paid. The difference in this respect between a public and a private corporation is simply that a public corporation *must* pay interest, earnings or no earnings, while a private corporation is under no obligation to pay unless there are earnings out of which payment can be made. That is one of the incidents of limited liability joint stock enterprise. The contrast which is drawn between the small amount of $2,700,000 to be raised by the City and the $5,000,000 capital of the Company has no meaning. The Company served a much larger area than the Hydro attempted to serve at the beginning of its operations and the Company had a steam reserve plant which the Hydro did not include in its estimates. Year by year additional By-laws had to be passed authorizing the borrowing of additional sums of money.[15] The business of

[15] See the "Annual Reports of The Toronto Hydro Electric System from 1911."

distribution of electrical power is of such a nature that continuous increments of capital are necessary if the business is serving an area in which the population is increasing. For that reason the City can never hope to possess the Hydro system "free, gratis." In so far as the plant has earned at any time surplus sufficient to extinguish debt, that debt has been paid by the citizens and in no sense has any of the property been procured for nothing.

The City of Toronto passed a Hydro By-law as described and entered into a contract with the Hydro Electric Commission for the supply of power; the Commission proceeded with its plans and built a transmission line from Niagara to Toronto. The circumstances of the relations between the City and the Hydro Commission at that time as well as at later periods show conclusively that the City of Toronto was being used by the Hydro for its own purposes. Not without difficulty did the Hydro Commission retain control of the City Council. The Council changes its composition to some extent every year and a fluctuating body is always more difficult to manipulate than a permanent or long-continued body.

Had the City Council of Toronto not been involved in the Hydro propaganda and had it not been so deeply committed as it was to the support of the Commission, it would have been free to make its own arrangements with the generating, transmitting and distributing companies. These ar-

rangements could have been made by contracts or by purchase on terms very favorable to the City. In the first case the City would not have had to find any capital and in the second case the amount of capital required would have been a fraction of the amount which the City had to procure by way of contribution to the grandiose plans of the Hydro-Electric.

In 1907, before the By-law of January 1, 1908, was submitted to the voters, the Toronto Electric Light Company made three propositions to the City, any one of which might with advantage have been accepted. These proposals were in brief as follows:

1° An arrangement similar to that with the Gas Company; a fixed dividend of 8 per cent, surplus to go to reduce the rates, city to be represented on the directorate.

2° City to buy $1,000,000 of new stock at par. City to be represented by three on a Board of ten directors. The surplus over the agreed-upon dividend to go to reduce the rates as in the first proposal. The company's stock would then be $5,000,000 with $1,000,000 in bonds.

3° The City to buy plant at a price based on its present earning power and continue the contract with the Electrical Development Company.

The City Council at the instigation of the Hydro-Electric Commission rejected all these proposals.

The Hydro Commission built a transmission line, although there was already a line in existence, and then induced the City to form a Toronto Hydro-

Electric System to be managed by a Commission bearing approximately the same legal relation to the City Council of Toronto as the Provincial Hydro Commission bore to the Government. The Toronto Commission installed a wholly new distributing system, alongside of a portion of that of the Electric Light Company. Within the area of the activities of the Commission it entered into competition with the Company.

No emphasis had been laid, to say the least, in the Hydro propaganda before the vote for the By-law was taken, upon the limited area which the Hydro proposed to serve. The popular belief was certainly that the Hydro was to save public money by doing what the Electric Light Company was doing at a small part of the cost in capital expenditure.

In the municipal system of Toronto there is a small body separate from the City Council and independent of it. The function of this body is to subject to careful scrutiny all schemes involving public expenditure. This body, the Board of Control, instructed Messrs. Smith, Kerry and Chase, a firm of engineers, to prepare an estimate for a complete power and light distributing plant for the City. The estimate submitted by this firm amounted to $5,250,000. This amount did not include the cost of producing power or of transmitting it.

The engineers' estimate frightened the Board of

Control. The Hydro enthusiasts had always spoken in terms of a few hundred thousands and the engineers spoke in terms of millions. Clearly the most economical plan would be to take the existing plant of the Electric Light Company as a basis and to extend it as required by the growth of the City. The cost would be much less than the cost of installing a wholly new plant. But the Provincial Hydro would tolerate nothing but a competitive distributing plant to connect with their competitive transmission line. The Board of Control then asked Mr. Dow, a well-known electrical engineer in Detroit, to examine the estimates and to advise the Board. He suggested that instead of attempting to provide a plant to light the City as a whole, a small plant should be provided sufficient to compete with the Company within a restricted area and to furnish street lighting within that area. Mr. Dow advised that such a plant could be erected for $2,500,000. The Board asked, however, for $2,750,000.[16] No mention was made of these estimates in the By-law submitted to the ratepayers, although the Acts then in force required that the By-laws should contain reference to estimates in respect to the cost of their subject matter.

The By-law thus passed ostensibly to provide a complete system of lighting for the City really provided only a small part of such a system. In an

[16] Letter signed by James Pearson, in *The News*, Toronto, December 31, 1907.

important sense, apart from the question of area served, it was not complete. The Hydro Commission refrained from installing a steam plant on the ground that such a plant was not necessary. In a sense, that statement was true, the Hydro might rely upon the reserve plant of its competitor. It did so rely and made use of it when occasion required. Had this steam plant not been available, the Hydro would have been helpless.

The Electric Light Company reduced its rates as it must have had to do, competition or no competition, for with a larger amount of power to sell than formerly the Company had to reduce rates in order to stimulate demand. The Hydro Commission attributed unjustifiably the credit of rate reduction to the competitive action of the Commission. Consumers found great difficulty in comparing the costs of supply by the Commission and the Company respectively. The Company's rate was easily understood, but the rate as determined by the Commission was complicated. First, there was a so-called Service Charge of 3 cents per month for each 100 sq. ft. of lightable space within the residence, and second, there was an Energy Charge at 2 cents per K.W. hour for a certain number of hours determined by the measurement of the lightable space and at 1 cent per K.W. hour for the balance of the current used. The Company sustained its business, the competition notwithstanding.

There were several elements of advantage enjoyed by the Hydro Commission, both in respect to the transmission lines under the care of the Commission and the distributing lines under the care of the other. The Electrical Development Company had purchased from private owners a right of way about 100 ft. wide from Niagara to Toronto. On this right of way, fenced throughout, their transmission poles had been erected. This method involved a minimum of risk so far as the public was concerned. Only in cases where the wires crossed public roads was there any risk whatever. The Hydro-Electric Commission erected its poles in any place which suited its convenience, but in general erected them on the corners of farms and in other exposed and unfenced places. The Hydro Commission transmission line conveyed its current at double the voltage of the current of the Electrical Development Company, and therefore instead of less caution much greater caution was expedient. The Hydro Commission was amply warned of the dangerous character of the construction of its line. The Hydro Commission ruined the appearance of a great part of the shore of Lake Ontario in the neighborhood of Toronto by the erection of unsightly skeleton poles in places where they were both a public nuisance and a public danger.

The transmission line and the distributing system of the Companies were both liable for Pro-

vincial and Municipal taxes. For some years the Hydro Commission paid no taxes whatever and even when the municipalities revolted against the exemption, municipal taxes were levied upon the Commission only in respect to land and not in respect to improvements, although in the case of the competing Companies this was not the basis of taxation. The Toronto Hydro-Electric System paid no taxes of any kind either to the City or the Province. Before instituting a comparison between the financial results of private and public ownership in cases such as that of Toronto where the two systems were working side by side, it is obviously necessary to take the facts of taxation into account, as well as the facts of any impediments which may be thrown in the way of the private enterprise by the public authority.

In connection with the construction of the transmission line, a series of incidents occurred such as very frequently make their appearance in "public ownership" schemes. The lowest tender for the line was $1,009,000, but the contract was given at $1,250,000 to Messrs. McGuigan and Smith. The Smith in question was Mr. Cecil B. Smith, who had been the Chief Engineer for the original Provincial Commission of Inquiry into the Hydro schemes and who was the chief promoter of the affair from the beginning as has already been described. The acceptance of the contract to erect the line which he had himself projected as consult-

ing engineer was not wholly in accordance with professional etiquette as generally understood.

Had the Hydro-Electric Commission been content to remain an inspecting and regulating body, it might have rendered good service to the community without contributing to the destruction of private enterprise and without needlessly incurring on behalf of the Province an enormous debt. Only inordinate ambition on the part of a few politicians prevented a sensible and reasonable course from being followed.

The object of the Hydro policy was very plain. The promoters of the Hydro thought that the Companies—both transmitting and distributing—would be embarrassed by the competition of the Hydro because of the power of the latter to fix rates arbitrarily at a point which could yield no profit to the Companies and that the consequences to the Companies would be ruinous. At the same time the insidious approach by degrees had obtained the adhesion of the municipality of Toronto and therefore of a sufficient number of other municipalities to carry the scheme. This insidious approach was managed by means, first, of purely hypothetical estimates without any pretense of accuracy. The public were repeatedly assured that these estimates would not be exceeded. Then came the engineers' estimates. These were either thrown aside or cut down by the adoption of various devices until the estimates were brought to a point at which

they were only about five times in excess of the original hypothetical "estimates." By that time the public had been "educated" to a sufficient extent to swallow the reduced estimates. Then when the estimates were exceded, as they were, the public had gone too far to recede. Thus by the exercise of political craft, Toronto came to identify its interests with those of the Hydro, and so far as lighting was concerned it had to support the Hydro right or wrong.

VIII

THE HYDRO-ELECTRIC POWER COMMISSION
SECOND PHASE

III

Legislation to Condone Violations of Law and to Close the Courts
The Worrying of the Power Companies

In spite of the extensive powers of the Ontario Legislature, it has in general been difficult to persuade it that it is not bound by its own acts, and that in this respect its powers were limited. Thus the first business of the Hydro Commission was to get rid of all legislation on the Statute Book which might be embarrassing for the Hydro to encounter. Among Acts which appeared likely to hamper the proceedings of the Hydro was the Conmee Act. Under this Act the property of a joint stock company could not be taken from it without due process of law—a well tested principle as old as the earliest English charters, but most conspicuous in Magna Charta. The intention of the Act was to prevent the tendency towards predatory expropriation by municipalities and legislatures which was beginning to be evident before the last century

drew to its close. That is, it was devised to frustrate attempts to pass confiscatory legislation, the very kind of legislation contemplated by the Hydro Commission. In order to do what they intended to do, the members of the Commission inserted a clause in their first Bill to the effect that the Conmee Act did not apply to Hydro municipalities.

Then followed a series of Acts introduced by the Hydro, always at the end of a session of the Legislature and always without adequate time being given either for their discussion by the public or by the Legislature. That this procedure so contrary to sound parliamentary methods was deliberately adopted in order that the Acts might be rushed through the House without serious debate was quite evident.

Practically every Hydro Act was brought in and passed in this manner. Such a course had its disadvantages even for the Hydro. The Acts were invariably hastily drawn. They did not always provide what they were intended to provide. Important omissions were often made. Thus in the Peterborough case, three Acts were brought in and passed in place of one, because the first and second were both defectively drafted.

Amending measures upon amending measures have been passed in the general interests of the Hydro until the Hydro Acts constitute an enormous pile of ill-digested and incoherent legislation, nearly all of which would have been disallowed at

Ottawa, if the Dominion House were not amenable to the wide-stretching influence of Hydro propaganda.

The Act which established the Hydro-Electric Commission endowed it with somewhat limited powers. These powers were chiefly of a visitatorial description. The regulation of the water powers of the Province was placed in its hands and the regulation of the water-power of Niagara was taken from the Park Commission and handed over to the Hydro Commission. So soon as the Commission assumed office, it began a series of irritating interferences with the Companies then developing power at Niagara. The object of these interferences was apparent. The Commission was attempting to depreciate the value of the plants previous to seeking power from the Government to expropriate them. Then followed a series of Acts by which the Commission removed any legal obstacles which stood in the way of the prosecution of their designs.

The first legislative step was to place the Commission in a position of immunity from prosecution on the ground of arbitrary interference with or of injury to property. This was accomplished by a clause in 6 Edw. VII. Chap. 15, Sec. 21. "No action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office without the consent of the Attorney-General for Ontario." In a Statute of the subsequent year (7 Edw. VII. Chap.

19, Sec. 23) this clause is repeated in substantially the same terms.

It is clear that such a clause practically made the Hydro Commission an irresponsible body. It is true that it was responsible to the Provincial Government and through it to the Legislature, but since the Hydro controlled both of these, it became in effect responsible to nobody. Without such a clause the acts of the Hydro in respect to private property would have been subject to revision by the courts of law. With such a clause no case against the Hydro could be brought in any court without the consent of the Attorney-General. That this was not a merely formal provision devised to prevent vexatious litigation was soon shown. When the Hydro proceeded in its customary arbitrary manner to enter upon private property and to erect its transmission poles, some of the farmers from whom the Commission had not taken the trouble to obtain leave to use their fields in this manner, attempted to sue the Commission, other measures having failed. They soon found that the Commission had made itself impregnable. No court would listen to the farmers.

This immunity led the Hydro Commission to commit a number of acts in violation of statutory provisions of the Legislature and even in violation of statutes passed at the instance of the Hydro. These acts would have led to great legal confusion and might have prevented the Commission from

selling its bonds owing to the doubtful legality of its proceedings. Therefore, the Legislature was called upon to homologate these proceedings by passing special Acts rendering them valid, *ex post facto*. Such a special Act (8 Edw. VII., Chap. 22, Sec. 1) was passed to validate contracts illegally entered into with certain municipalities and another (9 Edw. VII., Chap. 19, Sec. 3) was passed to validate another series of contracts made illegally, the necessary By-laws not having been passed. These contracts were the most important Hydro contracts. They were entered into with Toronto, London, and other cities.

While the Hydro was closing the courts of law against persons who might feel aggrieved by its proceedings, it did not scruple to appeal to the courts when such a course of action suited its purposes. The action against the Mayor of the Town of Galt mentioned in the last chapter was taken in pursuance of this policy. Other actions arising out of the illegal contracts entered into by the Hydro were instituted by ratepayers in Toronto and London. In order to put a stop to these actions and to close the courts effectively against all complaints against the Hydro, the Hydro secured the passing of the following legislation (9 Edw. VII., Chap. 19, Sec. 8):

> Every action which has been heretofore brought and is now pending wherein the validity of the said contract or any by-law passed or purporting to have been passed au-

thorizing the execution thereof by any of the corporations hereinbefore mentioned is attacked or called in question, or calling in question the jurisdiction, power and authority of the Commission or of any Municipal Corporation or of the Councils . . . to exercise any power . . . by whomsoever such action is brought shall be, and the same is hereby, forever stayed.

Thus all contracts with municipalities have been made by the Hydro and under its dictation. The municipalities have had no status. Moreover, all contracts are one-sided. If the municipality defaults, it can be sued. If the Hydro defaults, it cannot be sued. This condition has frequently aggravated the relations between the Hydro and the customers for its power both public and private. A joint stock company which contracted with a power user to supply a certain amount of power could be sued and found liable for damages if a breach of contract occurred. But the Hydro is immune from such a suit as those have found whose contracts were broken by the Hydro. Against it there is no recourse. The Attorney-General has consistently refused fiats in all important cases and in almost all others and the Hydro calmly deals with contracts and agreements as it wills.

The most conspicuous case was the violation not merely of law, but of the contract entered into between its predecessor, the Niagara Park Commission, and the Electrical Development Company in which the following clause occurs (Cl. 16):

The Commissioners will not themselves engage in making use of the water to generate electric, pneumatic or other power except for purposes of the Park, provided that in case the said Commissioners . . . at any time may have granted to any other person or corporation license to use the waters of the said Niagara or Welland Rivers, and by reason of failure of such person . . . to carry on the works so licensed, the . . . Commissioners find it necessary to forfeit said license and to take over said works, this clause shall not prohibit said Commissioners from operating such works for the generation and transmission, sale or lease of electricity or power.

This agreement was confirmed by an Act of the Legislature.

No question of the forfeiture of the license was raised, nor did any conditions arise which might cause such a question to be raised, yet the Hydro Commission made it evident that the intention was to disregard this agreement and to worry the Company into submitting to the forfeiture of its property.

The Conservative newspapers were much puzzled during the earlier phases of Hydro history. They looked with dismay upon the apparent increasing power over the constituencies of the Chairman of the Hydro Commission and gave his schemes a reluctant and hesitating support.[1] In the beginning of the year 1908, the Conservative press began to sound a note of alarm. In spite of pacific utterances on Hydro platforms, the actions of the

[1] See, for example, articles in *The News*, Toronto (18 November, 2, 10, 26 December, 1907, etc.)

Hydro Commission showed clearly the direction of its policy as well as the vast ambitions, political and industrial, of those who were dominating the Commission. On December 29, 1907, addressing a public meeting in Toronto, on the eve of the vote for the Hydro By-law of January 1, 1908, Mr. Beck disclaimed any attack upon the power Companies.

> There was never any intention on the part of the Government of Ontario, or on the part of any municipality, to do them injustice, or to treat them otherwise than with kindness or consideration.[2]

This Mr. Beck said, knowing very well that the By-law for which he was pleading, if passed and if carried into effect, would be employed by him to accomplish either the ruin or the expropriation of the power Companies.

The Conservative press was not deluded by Mr. Beck's protestations.

The News (of Toronto), then a Conservative newspaper, but independent of party control, put its views in the following terms:

> In the contract between the Ontario Government and the Electrical Development Company there is a clear and unequivocal agreement based upon a fixed annual rental that the Government will not generate energy at Niagara in competition with a private company. It is also provided in the various Niagara concessions that each shall supply energy in Ontario at equal prices at equal distances from the point of production. The Electrical Development Company has built a transmission line to Toronto. It is due to

[2] *Mail and Empire*, Toronto, December 30, 1907.

the action of the Government that it has not extended its transmission system throughout Western Ontario. The Ontario Power Company has devoted its whole attention to the American market; has built no transmission lines in Ontario, and has substantially violated the very terms upon which its concession was obtained. The fact that this is an American company is not a material consideration. It is of no consequence whether these services are provided by British Canadian or American capital so long as good faith obtains and contracts are observed. But the Government, which is bound by a solemn agreement not to compete with the Electrical Development Company, has arranged to buy the surplus power of the American company and to build transmission lines, by assessment upon the municipalities, for its distribution throughout the Province, thus relieving the American company from a great capital outlay and heavy interest charges, making it impossible for the Electrical Development Company to make connection with the western municipalities, cutting off one-half or two-thirds of its natural market, and dividing the market which its transmission line reaches by establishing a competing transmission system.

The situation is not affected in the least degree by the character of the capitalists concerned, by their financial methods, or by any evidence that their design was to establish a monopoly. That they aimed at a monopoly seems to be undoubted. That is the habit of modern corporations, but power to regulate lies in the Government. *The News* has always held that their concession was obtained without proper provision for regulation. We have not spared the politicians by whom the concession was granted. We have always maintained that a private monopoly at Niagara should not be tolerated. Public contracts, however, must be observed, and the faith of the Province must be kept inviolable. The remedy for the situation which has been created lies, therefore, in regulation or expropriation, not in repudiation or confiscation.[3]

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[3] *The News*, Toronto, January 6, 1908.

The Conservative Party as well as a large section of the public had been stampeded into support of the Hydro, right or wrong; immense though fatuous promises had been made by the Hydro enthusiasts, and no reasonable argument was even permitted to be heard.

The policy and conduct of the Government and of the Hydro Commission brought the Electrical Development Company within a few months after the completion of its plant, and after it began to supply power in Toronto into a condition of financial embarrassment. The embarrassment was occasioned by the facts that it had not been able to sell all its bonds, and that in order to complete its plans a loan was necessary. This loan had been obtained in London by hypothecation of its bonds to a larger amount than the amount of the loan. Owing to the action of the Ontario Government—action which seemed destined to lead at no distant date to confiscation—the lenders became nervous about their security and peremptorily required repayment of the loan. The incident discloses quite conclusively the immediate reaction of confiscatory legislation.

It may well be understood that the management of a public service corporation in the Province of Ontario at this time was a hard and disagreeable business. The franchises which had been bought and paid for by the companies could not be maintained against a Government which sheltered it-

self at every turn behind the plea of immunity from prosecution for breach of contract; yet the capital by means of which the plant had been constructed had been obtained on the strength of an "irrevocable license" issued by the authority of the Government and explicitly confirmed by it. The situation into which the Company was forced by the Hydro Commission and by the Government which was subservient to it, rendered any further appeal to the money market impossible of success. The two companies,[4] which now depended upon the new transmission line for their supply of power, still had their steam plants to fall back upon, but the power they were obtaining from the Electrical Development Company was necessary for them and great inconvenience must have resulted to the public services they were rendering unless that supply was continued.

Mr. William Mackenzie was interested in one of these companies (the Toronto Street Railway Company), but up till that time (January, 1908) he had not been interested in the other company (the Toronto Electric Light Company) nor in the Electrical Development Company which, as has been described, grew out of the Electric Light Company. Partly out of self-interest, in connection with the Street Railway Company, of which he was President, although he actually owned only the number

[4] The Toronto Street Railway Co. and the Toronto Electric Light Co.

of shares necessary to qualify as a director, and partly out of mere generosity, Sir William Mackenzie went to his strongbox and took out three million dollars in securities. These he placed at the disposal of the Electrical Development Company in order that it might arrange its floating obligations and continue its service. This really generous act was greeted with noisy demonstrations on the part of the Hydro press. "The transaction was denounced as a deadly menace to the Beck policy."[5] The more reasonable newspapers pointed out:

> The chances are, that the Electrical Development Company was very seriously embarrassed in its financial operations as a direct result of the Government's policy and that Mr. Mackenzie and his allies have determined to support the enterprise and, as heavy borrowers in the British Market, to avert the disrepute and the damage to Canadian credit which its collapse would involve. This is satisfactory for the moment, whatever may be the ultimate results.[6]

The Hydro newspapers saw in this simple transaction entered into for the purpose of protecting the interests of British and Canadian investors a malignant scheme to monopolize Niagara power. Since the Hydro Commission was aiming at a monopoly on its own account, such an accusation was merely brazen.

As a matter of fact, the Companies seem to have felt that the situation was intolerable, and that

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[5] *The News*, Toronto, February 17, 1908, referring to an attack upon the transaction in the *Toronto Telegram*.

[6] *The News, loc. cit.*

there being no apparent limit to the dictatorial attitude of the Government and of the Hydro Commission by which it was controlled, and there being no hope in an appeal to the public conscience in the then state of the public mind, the best course to pursue was to offer to hand over the enterprises to the public authorities on the best terms obtainable. With this object in view the Toronto Electric Light Company offered in February, 1908, to sell its business to the City of Toronto. This Company had previously in accordance with its business policy entered into a contract with its allied company, the Electrical Development Company, for the supply of power from its new transmission line from Niagara. The idea of the purchase by Toronto of the Electric Light Company and through that purchase the possession of a supply of power independently of the Hydro Commission did not suit the policy of that body. If the City bought the Electric Light Company, it would also buy the contract for the supply of power which the Company had made with the Electrical Development Company. *The Globe,* one of the most ardent Hydro papers, urged upon the Toronto City Council to refuse the offer unless it involved "the furnishing of power more cheaply than the Hydro Electric Commission's pole line."[7]

The intention of the Hydro party evidently was

[7] *The Globe,* February 22, 1908.

to compete with the Electric Light Company by offering service at a rate which could not pay either the Hydro or the Company in the hope that the property of the latter might eventually be bought at the price of scrap copper. The City Council obeyed the Hydro mandate. "It required less than thirty minutes yesterday for the City Council to receive a message from the Mayor in support of a proposal to apply for a contract to the Hydro-Electric Commission," etc.[8] The Mayor stated that the City was "in honor bound" to enter into a contract with the Hydro-Electric Commission and that therefore unless the Toronto Electric Light Company could be acquired without the attached contract with the Electrical Development Company, it could not be acquired at all. Meanwhile, the Hydro-Electric Commission had not even let the contract for the transmission line which it proposed to erect.[9]

The Hydro, having contracted with the Ontario Power Company for a supply of power and with the City of Toronto for the sale of this power, proceeded to the erection of a transmission line. The Hydro thus entered into competition with the Companies whose business it was appointed to regulate. According to the Premier (Mr. Whitney), nothing was to be done adversely to the power Companies or to the interests of those who had invested

[8] *The World,* March 17, 1908.
[9] This contract was let in August, 1908.

money in them unless these Companies proved to be unreasonable. Yet the initial steps in a campaign against the investors in all public utility securities in Canada was begun immediately the first Hydro Bill was passed, and in spite of contemporaneous protestations on the part alike of the Government and the Hydro Commission.

The history of the years between 1908 and 1916 need not be detailed. The competition, such as it was, went on; the Hydro continued its propaganda; the War made financing difficult for the Companies. In connection with the financial arrangements of the British Government, the securities of the Electrical Development Company, held chiefly in England, were lent to the Government by their holders in exchange for British Government obligations. The Company survived, although further financing was not at that time possible. The circumstances of the War had no ameliorating effect upon the Hydro Commission. The Chairman, now Sir Adam Beck, became increasingly aggressive. The Hydro Commission in spite of the rhodomontade with which its proceedings were customarily lauded, had organized little besides demonstrations. It had erected a transmission line, but that was practically all. No power had been generated by it at Niagara.

Negotiations for the purchase of The Ontario Power Company began in 1915. The purchase was concluded in May, 1917; the price being $22,669,-

000. The transaction was effected without any cash payment. The Hydro Commission assumed the bonded indebtedness of the Company and exchanged its own bonds for the Company's common stock.[10]

On March 20, 1917, Sir Adam Beck launched with his customary recklessness an attack upon the Electrical Development Company in the Provincial Legislature. He accused the Company of "stealing water." The Company had, he said, under its agreement, the right to develop 125,000 H.P. whereas on certain dates which he mentioned it had developed up to 149,750 H.P. "We must have that power for the manufacture of munitions of war and for the people of Ontario, and we cannot afford to tolerate any more conduct of this sort on the part of these interests."

The facts were, as stated by Sir William Mackenzie in a letter to the Premier,[11] that one-third of the total power developed by the Electrical Development Company was being supplied to munition works. These were on both sides of the line. Sir Adam did all he could to influence the Dominion Government to prevent the export of power, although he knew that the additional power which was being exported was being used for munition purposes. The British Government intervened and asked the Dominion Government not to interfere

[10] *The Globe*, Toronto, June 1, 1917.
[11] Quoted below.

with the supply of power to American munition works which were fulfilling contracts for the British War Office.

Sir William Mackenzie in a letter to Sir William Hearst[12] describes very correctly Sir Adam Beck's campaign:

> Sir Adam has more than once reflected upon my business judgment and, with strange inconsistency, persistently covets one after another the things I have tried to build up.

The Hydro Commission from the beginning of its history has displayed no initiative. It has followed the lead of others. It has invariably interposed itself when it seemed possible to gain by work which had already been done. It has persistently "reaped where it had not sown and gathered where it had not strawed."

In the letter from which quotation has been made, Sir William Mackenzie narrates an incident characteristic of the recklessness of Sir Adam Beck's conduct. He accused an official of the Toronto and York Radial Railway Company of having made a statement, the purport of which was not disclosed. The official was able at once to prove that he had not said what Sir Adam Beck attributed to him. Whereupon "Sir Adam coolly retorted, 'Can't you take a joke?'" "I will confess," Sir William Mackenzie adds, "that at the time I could not see the joke, nor do I see it yet; but then

[12] Published in *The Mail and Empire*, Toronto, March 28, 1917.

I am of Scotch descent, and probably fail to appreciate Sir Adam Beck's peculiar sense of humor.[13]

The Company was bound to pay and did undoubtedly pay to the Province in respect to all the power it utilized; there could not be any question of "stealing." If, as is possible under the pressure of demand for power for munitions at the most acute stage of the War, in the spring of 1917, a larger quantity of water was being diverted from the Falls than the Treaty permitted, that offence, if any offence was committed, did not fall within the jurisdiction of the Hydro Commission. It was clearly the duty of the generating company at that critical moment to utilize every pound of water which its plant, including its reserve plant, permitted. At that moment, the Hydro Commission was supplying for munition manufacture from its quota of power a smaller proportion than the Electrical Development Company was supplying. The whole matter was put very clearly in a letter to Sir Adam Beck by Mr. R. J. Fleming, Manager of the Electrical Development Company.[14] Mr. Fleming pointed out that his Company reported each month to the competent authorities, Provincial and Dominion, the quantity of power utilized and that these authorities had raised no objection nor had they suggested that the Company was exceeding its legal rights. Mr. Fleming very pertinently adds:

[13] Published in *The Mail and Empire,* Toronto, March 28, 1917.
[14] Published in *The Mail and Empire,* March 27, 1917.

On February 12, 1917, we were notified by the Hydro-Electric Commission that the Government had created the anomaly of appointing you, our main business competitor, as inspector under the legislation known as the "Act to regulate the use of the waters of the Province of Ontario for Power Purposes." By this power given your Commission, you override the International Waterways Commissioners, and the Queen Victoria Niagara Falls Park Commissioners, with whom we have our agreement; and without a hearing of any kind, without any adequate knowledge of the facts, you publicly pronounce judgment upon us and charge us with stealing water. . . .

It might interest you to know that we have munition plants on our line whose demands total more than 60,000 H.P. and that when you seek to embarrass the operation of our Niagara plant, as you have been doing for many a day, you do not advance the interests of the munition plants of the country nor the cause of the Allies. Should you succeed in interfering with our export of power (which we have been assured is entirely devoted to use by the munition plants in Buffalo) our steam plants in Toronto will be closed down, as we cannot afford to operate them at such prices as we can secure for power here. . . .

In its distribution of power, this Company has more and more had consideration for industries engaged in the work of manufacturing munitions for Britain and her Allies. . . . This Company feels bound to give first preference to the manufacturing demands of munition plants, no matter where situated. . . .

It is perfectly evident that the storm raised by Sir Adam Beck, at this time, had nothing whatever to do with power service for munitions, but had everything to do with the political propaganda of the Hydro. He was developing his Chippawa project and to divert attention from the details of it, an attack on his competitors was necessary.

The views of Sir Adam Beck and his supporters may be regarded as being expressed in the following terms:

> Sir Adam Beck has been considerably hampered at times by the lack of authority to carry out what was obviously necessary. Representing the municipalities which are the authors and real owners of the Hydro-Electric system, he has secured for them the power and the control that at one time it seemed the Government desired to usurp. That there should be supervision and some prudent degree of control on the part of the Government is generally admitted, but many serious delays occurred at important phases of the Commission's work, and this had in some way to be obviated. There is actually abundant control over the Commission in the fact that the Commissioners are appointed by the Government. It has been sought to have a representative of the municipalities on the Commission, but no satisfactory plan has been devised, and the municipalities are not likely to have a better representative than Sir Adam Beck.[15]

The idea that in objecting to the irresponsible activities of Sir Adam Beck the Government is "usurping," indicates a curious interpretation of the meaning of "public ownership."

The so-called Hydro municipalities may one day own the Hydro plants, but in order to own them they must pay for them. Meanwhile, the huge capital invested in these plants has been found by the Province and until the Province has been reimbursed, the ownership of the Hydro cannot legitimately pass from the Province.

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[15] *The Toronto World,* April 7, 1917.

An example of the political heat engendered by the Hydro and its rates for different municipalities and of the influence of politics in the determination of rates is to be found in the following statement by Mr. T. J. Stewart, M.P., who was a member of the Hamilton Hydro Commission.

> Toronto has influence enough to get the same price for power as we do, even though we are nearer the source of supply. Hamilton has not enough pull with Beck. He owns and operates the Hydro and the people pay for it. If that is municipally owned power, I am not in favor of it.[16]

Since Mr. Stewart had been an ardent supporter of the Hydro in its earlier stages, this statement is significant.

During the War, the Companies working various franchises found difficulty in financing the extensions to which they had committed themselves and very naturally asked for extended time in order to carry out the proposed extensions. Their applications were opposed by the Hydro on the ground that they were not in accordance with Hydro policy.[17] The attitude of the Hydro in all these matters was that of a dog in the manger. It was indifferent to the public convenience, and was concerned wholly with the acquisition of a monopoly in the generation and distribution of electrical power.

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[16] *The Evening Telegram,* Toronto, March 7, 1917.

[17] As in the case of the Toronto Suburban Railway, see *The Evening Telegram, Toronto,* March 29, 1917.

The policy of worrying the Companies was evidently directed towards an end. When the Companies found themselves in a desperate position, they would be willing to sell out to the Hydro rather than to go on losing money. This scheme did not, however, succeed. The Companies were able not only to meet the competition, but the Electric Light Company was able to pay a dividend. Eventually, the Hydro was obliged to buy out both the Electrical Development Company and the Toronto Electric Light Company at prices which were considerably beyond the sanguine expectations of the Hydro promoters. Had the Hydro bought out the Companies at an earlier stage, which might easily have been done, the enormous expenditure represented by the cost of the transmission line and of the Chippawa project would have been avoided.

On March 20, 1917, Sir Adam Beck launched an attack upon a group of engineers. The Executive Committee of the Canadian Society of Engineers desired to appoint a committee of engineers to investigate the Hydro projects. No public body could have acted more appropriately. It happened that the Chairman of the Society was Mr. E. W. Oliver, Chief Engineer of the Canadian Northern Railway, and there were upon the Executive Committee other railway engineers. The Chairman proposed for the Investigating Committee was Colonel R. W. Leonard, well known as an engineer, with great experience in construction and without political

affiliations. While attempts were being made by the Hydro Commission to control the town of St. Catharines in which Colonel Leonard resided, he had raised his voice at a public meeting against Hydro domination—that was all. Yet it was enough; Sir Adam Beck denounced this Investigating Committee and the Executive of the Canadian Society of Engineers as partisan bodies.

> How can the Ontario Government—and I have reason to believe the Government will not—assist these men with information to criticize [said Sir Adam]. I call this colossal gall. I call it personified gall.[18]

Sir Adam Beck's contemptuous treatment of a body of engineers of the highest professional and personal integrity, who were invited to perform a task which could not be agreeable to them, might well be described in his own language.

[18] *The Evening Telegram*, Toronto, March 21, 1917.

IX

ABUSE OF POWER BY THE ONTARIO GOVERNMENT AND LEGISLATURE

THE Hydro-Electric Power Commission after the purchase of the plant of The Ontario Power Company began to generate power at Niagara Falls in flagrant violation of the undertaking given by the Ontario Government in the agreement between the Niagara Falls Park Commissioners and the Electrical Development Company. This agreement, which was confirmed by the Government, contained a clause to the effect that the Park Commissioners would not generate power at Niagara. Before the purchase of The Ontario Power Company was completed, the Government prepared the way for the contemplated breach of agreement. Four Hydro Bills were introduced in the closing hours of the session of 1916 and another series was similarly introduced in the succeeding session of 1917. Taken together, these legislative Acts constitute an amazing group. They indicate a strange obliquity in political ethics as conceived by the Ontario Government, and as well an unusual perversion of the meaning of language. According to the principle of these Acts, any private person may be wholly

deprived of his civil rights by a Provincial Legislature and this Legislature may also declare that black is white or white is black and give legal force to its decision. The clause, for example, which declares that water taken from Niagara shall not be deemed to be water probably stands alone as an example of unintelligent legislation.

Fanatics for "public ownership" forget that the public is composed of private persons and that injuries to private persons are in the nature of the case injuries to the public. The circumstance that a government owes its position to popular election does not justify it in engaging in proceedings such as those which in past times brought autocratic rulers to their downfall. The perpetrators of the legislation in question did not realize what is an indisputable fact, that when a government violates the law, it sets an example of a character very dangerous to the stability of government.

The clauses in various Acts of the Ontario Legislature, relating to Niagara Power which seem to be specially open to criticism because they violate universally accepted principles of law in relation to civil rights, are as follows. The list includes clauses in some of the Acts which have been quoted in the preceding pages as well as clauses in the Acts of the years 1916 and 1917.

6 Edw. VII, Chap 15, Sec. 21.—No action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his

office without the consent of the Attorney-General for Ontario.

7 Edw. VII, Chap. 19, Sec. 23.—Without the consent of the Attorney-General, no action shall be brought against the Commission or against any member thereof for anything done or omitted in the exercise of his office. 6 Edw. VII, c. 15, s. 21.

Contracts were made between the Hydro-Electric Power Commission and a large number of municipalities without the previous submission to the electors in these municipalities of estimates and other information as required by law. These contracts were afterwards validated by several Acts of which the following are the important clauses:

8 Edw. VII, Chap. 22, Sec. 1.—And the said by-laws are hereby confirmed and declared to be sufficient, legal, valid and binding for the purposes thereof.

9 Edw. VII, Chap. 19, Sec. 3.—Notwithstanding any provision of any by-law of the council of any of the corporations hereinafter in this section mentioned to the contrary, the said contract as so varied shall be and the same is hereby declared to be valid and binding according to the terms thereof upon the Corporation of the City of Toronto, the Corporation of the City of London, the Corporation of the City of Guelph, the Corporation of the City of Stratford, the Corporation of the City of St. Thomas, the Corporation of the City of Woodstock, the Corporation of the Town of Berlin, the Corporation of the Town of Galt, the Corporation of the Village of Hespeler, the Corporation of the Town of St. Mary's, the Corporation of the Town of Preston, the Corporation of the Town of Waterloo, the Corporation of the Village of New Hamburg, and the Corporation of the Town of Ingersoll.

9 Edw. VII, Chap. 19, Sec. 4.—It is hereby further declared and enacted that the validity of the said contract as so varied as aforesaid shall not be open to question and

shall not be called in question on any ground whatever in any Court, but shall be held and adjudged to be valid and binding on all the corporations mentioned in section 3, and each and every of them according to the terms thereof as so varied as aforesaid and shall be given effect to accordingly.

The Mayor of the Town of Galt having declined to execute the contract in respect to that town, the following was passed:

9 Edw. VII, Chap. 19, Sec. 5.—The said contract as so varied as aforesaid shall be treated and conclusively deemed to have been executed by the said Corporation of the Town of Galt.

Actions having been brought in consequence of the illegal contracts and in one case a judgment given adverse to the Hydro-Electric Commission, the following was enacted:

9 Edw. VII, Chap. 19, Sec. 8.—Every action which has been heretofore brought and is now pending wherein the validity of the said contract or any by-law passed or purporting to have been passed authorizing the execution thereof by any of the Corporations hereinbefore mentioned is attacked or called in question, or calling in question the jurisdiction, power of authority of the Commission or of any Municipal Corporation or of the Councils thereof or of any or either of them to exercise any power or to do any of the acts which the said recited Acts authorize to be exercised or done by the Commission or by a Municipal Corporation or by the Council thereof, by whomsoever such action is brought shall be and the same is hereby forever stayed.

The agreement made between the Electrical Development Company and the Government of the Province of Ontario contains the following clause:

16. The Commissioners will not themselves engage in making use of the water to generate electric, pneumatic, or other power except for the purposes of the Park, provided that in case the said Commissioners shall have granted or at any time may have granted to any other person or corporation license to use the waters of the said Niagara or Welland Rivers, and by reason of failure of such person or corporation to carry on the works so licensed the said Commissioners find it necessary to forfeit said license and take over said works, this clause shall not prohibit said Commissioners from operating such works for the generation and transmission, sale or lease of electricity or power.

Being desirous of constructing works on the Chippawa River and of taking water therefrom for the development of electrical power, the Government introduced and the Legislature passed the following:

6 Geo. V, Chap. 20, Sec. 3.—The Government may authorize the Commission to:

(a) Enter upon, survey and lay out, all such lands, water, water privileges and water powers as may be required for the construction of the works hereinafter mentioned;
(b) Acquire options upon and enter into preliminary contracts for the purchase of land for sites, right-of-way, the location of buildings, plant, works, machinery and appliances required for the works hereinafter mentioned;
(c) Construct, erect, maintain and operate works for the purpose of diverting the waters of the Niagara River, Welland River, and tributary waters, or any of them, and conveying the same by aqueduct, conduit or canal, or in any other manner, from any point on the Welland River, or on the Niagara River, above the Cataract, and discharging such waters into the Niagara River;
(d) Construct, erect, maintain and operate at or in the vicinity of such place of discharge, works, plant, machinery and appliances, for the use of the waters so taken and

diverted in the development of a water power for the production of electrical or pneumatic power or energy; (e) For such purposes, exercise all powers and enforce all rights which may be exercised and enforced by the Commission when taking land or other property in the exercise of powers conferred by or under The Power Commission Act.

Full powers are conferred upon the Commission to "construct, erect, maintain and operate works for the purpose of developing the waters of the Niagara River, Welland River (Chippawa River) and the tributary waters or any of them," and to use the waters to develop electrical power in competition with the Electrical Development Company.

In order to prevent legal action on the part of the Company to restrain the proposed breach of the contract, the following legislation was enacted:

6 Geo. V, Chap. 20, Sec. 7.—The exercise of the powers which may be conferred by or under the authority of this Act or of any of them, shall not be deemed to be a making use of the waters of the Niagara River to generate electric or pneumatic power within the meaning of any stipulation or condition contained in any agreement entered into by the Commissioners for the Queen Victoria Niagara Falls Park.

Although actually engaged in business in competition with the existing Power Companies, legislation has been enacted authorizing the Lieutenant-Governor-in-Council to appoint Inspectors, who may enter upon the works of the Companies and take measurements and tests to ascertain the quantity of water used, the electrical and hydraulic

efficiency of the machinery, the number of cubic feet per second necessary to produce a specific quantity of horse-power, to regulate the operation of the works, and to compel alterations therein, and to shut off the power and close the works as may be necessary. See 6 Geo. V, Chap. 21.

To aid the municipalities and assist them in borrowing the necessary monies for the construction of Transformer Houses and Distribution Stations, the following was enacted:

6 Geo. V, Chap. 19, Sec. 9.—Section 18 of the Power Commission Act is amended by adding thereto the following subsection:

(8) Where a corporation has entered into a contract with the Commission for the supply of electrical power or energy, the debentures issued for any works for the distribution and supply of such electrical power or energy by the corporation shall not be included in ascertaining the limit of the borrowing powers of the corporations as prescribed by the Municipal Act.

It is clear that the effect of this clause is to diminish the security of all holders of Ontario municipal debentures.

The British North American Act. 1867 (sec. 92, sub-sec. 13) confers upon a Provincial Legislature power to make any law in relation to "property and civil rights in the Province." There does not appear on the face of the clause any specific limitation of the powers of Provincial Legislatures in respect to encroachment upon civil rights, and, were this clause taken by itself, it would appear to be within

the competence of a Provincial Legislature to make laws which involved palpable injustice. The Constitution of the United States (Art. 1, Sec. X) limits the powers of State Legislatures in several directions and particularly as follows: "No State shall . . . pass any . . . ex post facto Law or Law impairing the obligation of contracts." When the strength of the influence of the individual States during the formative period of the Union and the tenacity with which they clung to "State Rights," as against the authority of the Federal Legislature, are considered, this provision is very remarkable.

There is no similarly specific provision in the British North America Act; but the absence of such a provision cannot legitimately be regarded as affording legal sanction to the passing by Provincial Legislatures or executive Governments of Acts or Orders-in-Council which are palpably unjust. It is presumed that both act in good faith and with due regard to civil rights and liberties.

> It is a sound and well-recognized maxim of construction that in the interpretation of statutes we are to assume nothing calculated to impair private rights of ownership unless compelled to do so by express words or necessary implication. . . . We are not to assume without express words or unavoidable implication, that it was the intention of the Imperial legislature to confer upon Parliament the power to encroach upon private and local rights of property.[1]

[1] Strong, J., judgment in Queen *v.* Robertson, 6 S.C.R., p. 134; 2 Cart., p. 107 (1882); Lefroy A.H.F., *Leg. Pow. in Canada*, Toronto, 1917-18, p. 24.

In placing "property and civil rights" within the jurisdiction of the Provincial Legislatures, the British North America Act evidently did so to the end that these might be protected. It cannot seriously be maintained that the Provincial Legislatures were expressly endowed with power to plunder the citizens of the Province within their jurisdiction, to repudiate contracts entered into by their predecessors or by themselves, to confiscate property belonging to British or other investors, and to close the courts against the aggrieved parties. Thus, although no explicit provision for safeguarding the interests of those with whom the Provincial Legislatures and Governments enter into contractual relations may be found in the British North America Act, machinery is, nevertheless, provided by means of which the limits of legislative and executive authority may be determined, and, in case of these limits being exceeded, remedy afforded. This machinery exists, in the first instance, in the Law Courts, before which complaints of undue exercise of power may be brought; in the second instance, in the Power of Disallowance, with which the Dominion Parliament is endowed; and, in the third instance, in the power of Imperial Parliament to disallow Dominion Acts and to amend or repeal the British North America Act or to pass any law relating to the Dominion or the Provinces.

There can be no doubt about the general inten-

tion of the framers of the British North America Act, because these intentions were in strict accordance with the general attitude of Imperial Parliament and of Imperial Administration. Under these intentions and in consequence of the attitude of which they were the outcome, the Dominion and the Provinces were endowed with very large powers on the presumption that these powers would not be abused. The authorities created by the British North America Act were, however, not endowed and could not be endowed with "absolute power." Parliament cannot delegate an unlimited authority, because, although its own powers are indefinite, they are, nevertheless, subject to Constitutional limitations. Large as the powers of Imperial Parliament are, they are not "absolute." This matter is left in no doubt, because under section 18 of the British North America Act, the "privileges, immunities and powers to be held by the Senate and House of Commons" (of Canada) ". . . shall never exceed those at the passing of this Act held . . . by the Commons House of Parliament of the United Kingdom."

All expressions, therefore, such as "sovereign powers," "almost absolute powers," etc., which have, in the course of recent discussions, been loosely applied to the powers of the Provincial Legislatures are wholly inapplicable to them, as indeed they are inapplicable to the British House of Commons. They are much less applicable to the

Provincial Legislatures because, since these Legislatures owe their existence to an Act of Imperial Parliament, and since their existence may be determined by it, they are, therefore, subordinate to Imperial Parliament. Their proceedings are, moreover, bound by certain rules and their Acts are subject to revision—Dominion Acts to the revision of Imperial Parliament, and the Provincial Acts to revision by the Dominion Parliament.

While the Provincial legislation is directly subject to revision by the Dominion authorities, the machinery of the British North America Act does not explicitly provide for revision or disallowance of Provincial legislation by Imperial authorities. That the effective right to revise or disallow the legislation of a Province inheres in Imperial Parliament, there can, however, be no manner of doubt, since Imperial Parliament might, if it so decided, pass an Act which would render null and void any Provincial Act. Thus the Secretary of State for the Colonies objected (in 1909) to a clause in an Ontario Act restricting the right of appeal to the Privy Council.[2] The Colonial Secretary also intervened in a case in 1911, whereupon the Dominion Minister of Justice recommended disallowance, and the Act in question was disallowed.[2]

Under the system which prevails in the British

[1] Report of Committee of Privy Council, April 27th, 1909; see also Lefroy, *Canada's Federal System,* Toronto, 1913, p. 33.

[2] Lefroy, *loc. cit.*

Empire from the centre to the Dominions, the exercise of power by the Executive Government is subject to defence in the Courts of Law. If any one is aggrieved at the exercise of that power, he may appeal to the Law Courts, and the Government can there defend its action. It is not necessary to submit proof of this from legal history. The proof is to be found in all authorities upon the law and practice of the Constitution.

A further principle has been well established, viz., that while within certain limits an executive Government may delegate its authority by Commission or otherwise, it cannot transfer to a person or body an immunity from prosecution which is not explicitly possessed by itself.

While the King cannot be personally sued in his own Courts, there does not seem to be any legal justification for the idea that any one who represents the King can be endowed with similar immunity. Indeed, it is clear that if this principle were admitted, there could be no such thing as *responsible government.* The meaning of *responsible government* in the sense in which these words apply to the British system, is that the Minister is responsible to the people, although his master the King is not.

"Some person is legally responsible for every act done by the Crown." This responsibility seems inevitably to be not merely to a legislative Chamber to which the Minister might (or might not) belong,

but primarily to the people through the Courts of Law, for by a Court alone could it be determined what the act was and by whom it was done.

Argument is scarcely necessary to show that the endowment of a Minister or other executive officer with immunity from appearance in a Court of Law in respect of any matter pertaining to his office is in entire discord with English law and with Constitutional practice throughout the British Empire.

It is obvious that the system has resulted from the development of British institutions. These institutions have acquired their present character through the interaction of constitutional checks by means of which the liberties of the people have been secured against the arbitrary exercise of Governmental authority. If any Governmental organ, whether superior or subordinate, exercises authority, it is under the principle and practice of the Constitution bound to show that the authority is exercised by rule of law.

There thus underlie all discussions upon the powers of Legislatures and upon the conflict of laws the assumption that the Courts of Law are open and that it is the duty of the Courts to determine such questions.

The history of the relations between the Dominion and the Provinces in this regard need not be detailed here further than to draw attention to the following points:

1. That in all the published correspondence and

discussions from the time of Confederation onwards upon the question of Provincial legislation it is either explicitly stated or it is implicitly assumed that the Courts of Law are open to those who feel themselves aggrieved by such legislation. For example, when Sir John Young, Governor-General of Canada, suggested in a despatch dated 11th March, 1869,[4] that a special tribunal should be instituted in Canada with jurisdiction over the subject of Provincial legislation, Lord Granville, then Colonial Secretary, replying to this suggestion, wrote:

> I see no reason for the establishment of such a tribunal. Any question of this kind could be entertained and decided by the local Courts, subject to any appeal to the Judicial Committee of the Privy Council.

So also Sir Charles Fitzpatrick, when Dominion Minister of Justice, while refusing to recommend the disallowance of An Act to Amend the Ontario Insurance Act (1 Edw. VII, Chap. 21) reported:

> The undersigned considers that it is competent to a legislature to declare what the effect shall be of statutory proceedings authorized by the legislature. These sections (those objected to) appear to do no more. They cannot certainly affect any proceedings or appeal competently authorized by Parliament, and if the Supreme Court gives an appeal from the decisions in question, that right of appeal is not taken away by these provisions.[5]

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[4] Hodgins, W. E., *Correspondence . . . upon . . . Dominion and Provincial Legislation,* Ottawa, 1896, p. 68.

[5] Hodgins, *opicit,* p. 4.

The Judicial Committee of the (Imperial) Privy Council puts the case more strongly in the following judgment:

> It is the duty of the Courts, however difficult it may be, to ascertain in what degree and to what extent authority to deal with matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist, and in order to prevent such a result the two sections (B. N. A. Acts 91 and 92) must be read together, and the language of one interpreted and where necessary modified by that of the other.[6]

Even in the arguments against disallowance of Provincial Acts advanced on behalf of the Provinces, the same assumption is manifest.

For example, in 1905, when the disallowance of a British Columbia Act was urged, the Attorney-General of British Columbia argued that

> the effect of disallowance is to make the Minister of Justice the highest judiciary dignitary in the land for the determination of constitutional questions, and in reality above the supreme Court of Canada. The decisions of the Supreme Court of Canada are open to question in the Judicial Committee of the Privy Council. From the decisions of the Minister of Justice there is no appeal. He stands alone.[7]

2. Up till the year 1896 the principle that a Provincial Act which involved injustice might be disallowed on the ground that the perpetration of

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[6] Judgment of Privy Council in Citizens Insurance Co. *v.* Parsons, 7 App. Cases, p. 108.

[7] Lefroy, *Canada's Federal System*, p. 41.

injustice is contrary to public policy was generally accepted.[8]

Since that date there is manifest a change of view on the part of various Ministers of Justice.

For example, in a case cited above, Sir Charles Fitzpatrick reported:

> The undersigned conceives that your Excellency's Government is not concerned with the policy of this measure. It is, no doubt, intra vires of the legislature, and, if it be unfair or unjust or contrary to the principles which ought to govern in dealing with private rights, the constitutional recourse is to the legislature, and the acts of the legislature may ultimately be judged by the people.[9]

This view was also held by the late Hon. David Mills (Minister of Justice, 1897-1902), and was further developed by Sir Charles Fitzpatrick in 1902, to the effect that "each Provincial legislature within the sphere of its authority and jurisdiction should be supreme and amenable only to its constitutional judges, the electors of its own Province."[10]

The view was endorsed in 1909 by Sir Allan Aylesworth when Minister of Justice.

This view must be regarded as failing to touch the marrow of the question, even if it were indisputable on constitutional grounds. To throw the responsibility for legislation by a Legislature and for administrative acts by an executive Government

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[8] Cf. Sir Allan Aylesworth, quoted by Lefroy, *Canada's Federal System*, p. 35.

[9] Hodgins, W. E., *Correspondence, etc.*, 1905, p. 4.

[10] Lefroy, *Canada's Federal System*, p. 35.

back upon the people is to evade responsibility altogether, and to contribute to the destruction of Parliamentary government. The remedy for injustice in an organized society is not an appeal to the people, but an appeal to a Court of Law.

It is only necessary to look at the question in a practical way to realize the absurdity of the suggestion that there is no legal remedy, but only a political remedy, for administrative error or injustice. If, for example, an individual creditor of the Province, who is either resident or non-resident, finds himself aggrieved by a legislative Act, must he engage in political propaganda and endeavor to unseat the Government, or submit tamely to what he conceives to be unjust treatment? To suggest the former course is to incite persons who come into relations in any way with the Government, to engage in political action, with the result, if it were applied that the political field, instead of being reserved for questions of public moment, would be degraded into an arena for the settlement of private quarrels between the Government and the persons whose contracts the Government had violated.

Moreover, if the electorate is to be looked upon as the final tribunal for the trial of causes against the executive Government, it would be necessary to provide machinery for appeal to that tribunal by aggrieved parties. There exists no such machinery, and the provision of it might be consistently and continuously refused by the Legislature.

Under the doctrine so developed, the Provincial Legislatures might close all the Law Courts, deprive every citizen of his civil rights, confiscate all personal and real property, send all parties to jail or banish them from the Province, or perform any other tyrannical act, without hindrance so long as the Legislatures were returned by the constituencies. They might repeal all the statutes against bribery at elections, and, by "stuffing" ballot boxes and other means, not unknown in the political history of Ontario, continue in power indefinitely, exercising "almost sovereign powers."

Even if the Provincial Legislatures were to be regarded as supreme within their own sphere, it would still be necessary to determine the limits of that sphere. Have the electors of the Province been endowed with the power of determining the limits of their own powers, irrespective of the corresponding powers of the people of other Provinces of the Dominion, not to speak of the powers of other peoples within the Empire? It is clear that they have not, otherwise there could be no national or Imperial cohesion.

The doctrine that Provincial Legislatures have the power to pass legislation, even if it is of a demonstrably unjust and confiscatory character, seems to have been re-enforced by a misinterpretation of a judgment of the Judicial Committee of the Privy Council in the case of the Attorney-General of Canada *v.* the Attorney-General of Ontario, Que-

bec and Nova Scotia, 1898.[11] The passage in the judgment upon which the doctrine in question is based is as follows:

> The suggestion that the power [of legislation] might be abused so as to amount to a practical confiscation of property does not warrant the imposition by the Courts of any limit upon the absolute power of legislation conferred. The supreme legislative power in relation to any subject matter is always capable of abuse, but it is not to be assumed that it will be improperly used; if it is, the only remedy is in an appeal to those by whom the legislature is elected.

Before this pronouncement was made, there were (between 1867 and 1898), according to Mr. Lafleur, five cases in which Acts were disallowed on the ground of injustice,[12] while in some other cases the recommendations made by Ministers of Justice led to a change in the law, either by appeal or amendment, and, consequently, the necessity for disallowance was obviated. There was also one case subsequent to this pronouncement in which disallowance was recommended on the ground of injustice.[13]

Mr. Lafleur pointed out in the case upon which the above pronouncement of the Judicial Committee of the Privy Council was made, that the Provincial statutes in question had not only been passed by the Provincial Legislature, but, through the lapse of the period during which disallowance

[11] Appeal Cases 713.
[12] Cf. Lefroy, *Canada's Federal System,* Toronto, 1913, p. 46.
[13] Yukon Ordinance (1898) (*Ibid.*).

might be effected, had become binding laws. That is to say, that the pronouncement of the Privy Council applied to the whole process of legislation, viz., the passing of the Acts in question by the Provincial Legislature, the examination of the Acts by the Minister of Justice of the Dominion, and the consequent endorsation of the Acts by the Dominion Executive, the latter part of the process being devised for the express purpose of preventing the abuse of legislative authority by a subordinate legislative body.

Thus even if the doctrine were accepted that Dominion legislative authority is supreme, there is no justification for regarding Provincial legislation which is subject to revision by Dominion authority as binding until it is so revised.

In this connection the statement of Mr. Newcombe, Deputy Minister of Justice, sitting with the Privy Council of Canada (in the Alberta Case, 1910), may be quoted:

> The interpretation of the Judicial Committee of the Imperial Privy Council that we have a carefully balanced constitution, under which no one of the Provinces can pass laws for itself, except under the control of the whole exercised by the Governor-General, means that His Excellency is advised here locally under our system by the representatives of all the Provinces, and, therefore, there is reason for interfering locally which could not be urged in the case of Colonial legislation dealt with at the Court in London.[14]

[14] Cf. Lefroy, *Canada's Federal System*, p. 48.

It is to be observed also that in the case of the Acts of the Ontario Legislature to which exception is taken—one of the constitutional checks, viz.—appeal to the Courts of Law is removed, and, therefore, the legislation in question does not come within the category of valid legislation indicated in the judgment of the Privy Council (Imperial) quoted above.

The judgment of the Privy Council assumes that power will not be abused; but it is precisely the abuse of power about which complaint is made—abuse of power great enough to involve the removal of those constitutional checks, the assumption of which underlies the judgment.

It would not be in accordance either with the spirit or the letter of the law of England to submit to an electorate the interpretation of an Act of Parliament, nor the terms of a contract between the Executive Government and a private person. Clearly, therefore, the remedy proposed is wholly inapplicable in such cases. If it is the only remedy, it can be so only in the sense that all the checks upon illegal or unjust action which might have been provided for by the constitution have been proved to be ineffective. In that case the only remedy is to promote legislation by means of which other and more effective checks may be provided. No other meaning can be attached to the judgment of the Privy Council. It cannot be seriously suggested that every aggrieved person should demand

a general election in order to bring to account a Government which he regarded as having wronged him. Since he could have no power to force such an election, the remedy for him would be non-existent.

If a subordinate Legislature attempts to remove a constitutional check in order the more easily and effectively to perpetrate injustice, it is surely the constitutional duty of the superior authority to prevent the removal of such a check, and to declare as unconstitutional any legislation having that end in view.

There seems to be a general agreement among the authorities that, since about 1896, there has been a manifest reluctance to disallow Provincial legislation. The reason for that is not far to seek. The most important conflicts of jurisdiction had already taken place between the Province of Ontario and the Dominion. Owing to the fact that for many years the legislation of Ontario and the attitude of the Provincial Government towards questions of Provincial authority were determined by one of the most acute constitutional lawyers of his day, Sir Oliver Mowat, the cases brought by him in the interests of the Province of Ontario were invariably decided in favor of the Province, and this was the natural consequence of the fact that on all controverted questions of Provincial authority he took the utmost care to make exhaustive investigation before action was taken.

It seemed unlikely that any abuse of Provincial authority would occur nor would such abuse have occurred had the legal guidance of the Province remained in so competent hands as those of Sir Oliver Mowat.

Sir Oliver Mowat became Minister of Justice in 1896, and, although he retained office for only one year, his attitude towards the question of Provincial autonomy not only determined his view of the question during his period of office, but remained as a tradition of the Department of Justice. This attitude was founded upon what was assumed to be the characteristic of the conduct of Provincial Executive Governments, viz., serious consideration by competent experts of the legislation which was introduced and strict avoidance of the abuse of power. So long as these conditions existed, no practical harm could result from admission of the "right" of a Provincial Legislature to legislate as it pleased; but when these conditions ceased to exist, as they did, in nearly every Province of Canada, the time had already arrived when the Dominion Parliament should exercise its authority in order to secure the public interest of the Dominion against Provincial encroachment or misgovernment.

The effect of the unfortunate relaxation of control over Provincial legislation which appears to have crept in about 1896 is apparent in the scandalous episodes which have disgraced the Provincial

executives of Manitoba, Saskatchewan, Alberta and British Columbia. Irrespective of party, the executive Governments of all of these Provinces have shown how seriously they may abuse the power with which they have been entrusted by the people and endowed by statute.

The time seems to have arrived when the question of the abuse of powers by the Provincial executives and Provincial Legislatures ought seriously to be considered.

The claim to absolute power on the part of a Provincial Legislature has been put with greater vigor than soundness by the late Mr. J. J. Foy, Attorney-General of Ontario in 1909:

> For upwards of 200 years the Lords and Commons of Great Britain have legislated without fear of the Royal veto, although its existence has been undoubted; and, therefore, in full accord with the spirit and genius of British institutions, the people of the Province, being entitled to all the rights of British subjects elsewhere, and as free . . . to legislate within their jurisdiction as the Lords and Commons of Great Britain are free to legislate, cannot submit to any check upon the right of the legislature to legislate with respect to subjects within its well-defined jurisdiction, although a technical right to disallow may exist.[15]

This view of the "rights of a Provincial legislature" cannot be accepted. Even the Dominion Parliament possesses under Sec. 18 of the British North America Act no powers in excess of those of the House of Commons of the United Kingdom

[15] Lefroy, *Canada's Federal System*, p. 39.

in 1867; and that House did not possess at that time, and the Parliament Act notwithstanding, does not possess now, unchecked powers of legislation. A subordinate Legislature, especially one being but a single Chamber, could by no means be permitted to dispense with every constitutional check. The liberty of the people of the Province would otherwise not be worth an hour's purchase.

In several of the cases in which disallowance of Provincial legislation was asked for and refused, various Ministers of Justice remarked upon the injustice of the legislation, although they entertained the view that unjust legislation should not be disallowed unless the injustice of it affected the interests of the Dominion as a whole. This view was put forcibly by Mr. Doherty in his report upon the Alberta Act of 1910 relating to the funds derived from the sale of bonds of the Alberta and Great Waterways Railway Company. He says:

> There was considerable discussion at the hearing as to the practice and precedents in respect of disallowance of legislation by reason of unjust provisions, or because of its interference with vested rights or the obligation of contract, and a recent report of the predecessor in office of the undersigned was quoted as showing that the Governor-General should in no case be advised to disallow for such reasons. It is true, as has been frequently pointed out, that it is very difficult for the Government of the Dominion, acting through the Governor-General, to review local legislation or consider its qualities upon questions of hardship or injustice to the rights affected, and this is manifested not only by expressions in reports of Ministers, but also by the fact

that but a single instance is cited in which the Governor-General has exercised the power upon these grounds alone. The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operations of local statutes intra vires of the legislatures. Doubtless, however, the burden of establishing a case for the execution of the power lies upon those who allege it.

On this point it may be remarked that positive evidence of injury to the credit of the Dominion inflicted by an unjust Act of a Provincial legislature might be quite impossible to procure, and yet serious injury might have been inflicted. Injury of this character is invariably negative. Some people refuse to invest in the bonds of a Province whose Legislature passes unjust laws or whose executive Government commits unjust acts, and under certain circumstances the refusal of these people to invest might involve the closing of some money markets against the Province and even against the Dominion, but the difficulty of eliminating all the elements in the determination of the rate of interest other than the abstention of the investors in question would be almost insuperable in practice. Hence, definite proof is probably wholly impossible to obtain in any case. Nevertheless, the equilibrium of credit may have been seriously disturbed and on account of the abstention in question the rate of interest for public and private borrowers

alike might have been increased. An example may be given from the financial history of the United States. In or about the year 1885 a small municipality in the State of New Jersey defaulted in the payment of interest upon its bonds. This circumstance drew the attention of trustees and other holders of municipal bonds to the risk incurred in such investment. The consequence was the sale of large amounts of municipal bonds, not only in the State of New Jersey, but elsewhere in the United States, and the investment of the funds in European securities. These operations were effected quietly and many of them were conducted imitatively, those who conducted them being in frequent cases unaware of the reasons for the failure of confidence in municipal securities. Thus, although there seemed to be no doubt whatever of the fact, it might have been difficult to find more than one or two persons who actually acted directly upon the fact that the municipality in question had defaulted. In such a case legal proof might be very difficult to establish. So also in the case of the numerous prior liens created by various Acts of the Legislature of Saskatchewan. Certain loan companies promptly advanced the rate of interest upon loans effected in that Province, while others refused to lend there on any terms. Even in such case it would have been difficult to establish proof that injury had been committed upon the Province and upon the Dominion by the legislation in ques-

tion. Other causes for the increase in the rate of interest might easily be alleged. Moreover, the credit of the Dominion stands high and the effect of an individual Legislative Act of one Province upon that credit might be regarded in general as negligible.

It is necessary in the first instance to approach the problem in a more abstract manner. The principle that legislation or action of any kind which throws obstacles in the way of recovery of a debt contracted for goods supplied on credit involves an increase of the price of such goods, other things being equal, is well established. So also legislation which renders it more expensive to secure payment of interest upon a loan, must, other things being equal, increase the gross rate of interest or the rate of pure interest plus the premium of insurance against difficulty in procuring payment and against risk of loss of the principal. It may be regarded as susceptible of proof therefore in an abstract sense, that such legislation as that of the Province of Saskatchewan must be injurious not only to the Province but to the Dominion, because it conduces to the advance in the rate of gross interest, other things being equal. It is not necessary to prove that A. B. increased the rate demanded for a particular loan on the exclusive ground of the legislation.

So also in the Alberta case, according to the Minister of Justice, proof of injury to the credit of

the Dominion was wanting, yet it might be submitted that the proof lay on the face of the Act. If the injustice of the Act is admitted, the injury to the Dominion, however proportionately infinitesimal it might be, is apparent.

Thus, while it is true it may not be possible incontrovertibly to demonstrate that a single Act of a Legislature which perpetrates an injustice to an individual inflicts an injury upon the credit of the Dominion, it nevertheless does so, *because* it is an unjust Act, however inappreciably the credit of the Dominion has suffered, and however difficult it may be to prove any damage.

It is clear that if a succession of unjust measures is passed by the Provincial Legislatures or unjust acts are perpetrated by the Provincial executives, the effect of these acts is cumulative and that the total effect must be serious injury to the credit of the Dominion. The time for the Dominion authorities to impose a check is when these acts begin to be committed, not when the accumulation of grievances resulting from these acts renders drastic measures absolutely necessary, or when the damage is irreparable by any measures that can be taken.

The plea which underlies the decisions of various Ministers of Justice that the Dominion Parliament is not concerned with political ethics and that the Provincial Legislatures may pass any measure, no matter how unjust, so long as it does not infringe upon a privilege of the Dominion, seems to

the writer, for the reason stated above, quite inadmissible.

A sounder view is that unjust Acts do injure not merely the individuals who are prejudiced by them, but through the introduction of injustice into legislation unjust Acts diminish the authority of all legislation and an accumulation of them brings legislation and Legislatures alike into contempt. Not only, therefore, do unjust Acts perpetrated by a Province bring the legislation of that Province into contempt, but they bring the legislation of the Dominion into contempt also. Moreover, not only do unjust Acts reflect unfavorably upon the executive Government by which they are introduced, but as well upon the superior executive which fails to exercise the disciplinary power with which it has been endowed by the Constitution.

Still more important, in these critical moments, democracy is on trial. If every Province in our democratic Empire develops "particularist" views, such as have been expressed in some of the quotations given above, the Empire must fall to pieces; and if every democratic nation insists upon the "right to misgovern itself" democracy must fall to pieces.

In the United States particularism of the kind indicated led to the Civil War.

The effect of permitting the constitutional safeguards against arbitrary and anarchic conduct on the part of Provincial Governments and Legisla-

tures from falling into desuetude was clearly foreseen by a very eminent and extremely progressive British publicist who is now dead. Writing to the author in the year 1910, without reference to or knowledge of the Hydro-Electric situation in Ontario which at that time had not acquired wide public notoriety, this gentleman who then occupied high office, made the following remarks upon the question of revision of Provincial legislation by the Canadian Parliament:

> Now that the power of disallowance in the Federal Parliament, relied upon by the Fathers of Confederation as a check upon the spoliatory legislation of single chambered legislatures, has proved a broken crutch, a substitute should be found. There is nothing at present to check any Jack Cade in any of the Provinces having single chambered legislatures, if he can only catch for the purpose of one election, the willing ear of plunder-loving Demos, from playing all sorts of pranks. As soon as there is a slight check in Canada's present bounding prosperity, and the Bears begin to depreciate Canadian securities, the British investor will realize with amazement the absence of any security against mob rule in Canada, and the tap of his irrigating golden stream will be shut off from Canada, just as decidedly as it was a few years ago against Australia. This seems to me to be a real cloud on the horizon, and efforts should be made to guard against its blackening the whole sky.[16]

The Electrical Development Company applied to the Dominion Government for disallowance of the Hydro Acts passed in 1916 and 1917 by the Pro-

[16] The late Lord Grey in a private letter to the author.

vincial Legislature.[17] The petition of the Company was refused.[18] In stating the grounds for refusal,[19] Mr. Doherty, the Minister of Justice, remarks that any grievance felt by the Company might be fittingly brought before the Courts, and to the objection that attempts to bring grievances before the Courts had hitherto failed because of refusal of a fiat by the Attorney-General, he said that in his view

> means may be found independently of any consent of the Attorney-General by which the Courts could be afforded opportunity to grant any relief which may be consequent upon the view that the acts complained of are ultra vires.

Sufficient answer may be found in the terms of one of the Hydro Acts in which the Ontario Courts are forbidden to take cognizance of suits against the Hydro without explicit sanction of the Attorney-General.

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[17] *The Toronto World*, April 28, 1917.
[18] *The Star*, Toronto, May 8, 1917.
[19] *The Evening Telegram*, Toronto, May 8, 1917.

X

THE HYDRO-ELECTRIC POWER COMMISSION
THIRD PHASE

Crises in Affairs of the Commission

In the spring of 1916, there was a double crisis in the affairs of the Hydro-Electric Commission. The Provincial Auditor had frequent controversies with the Commission over its finances; and the municipalities instigated by the Hydro party demanded representation upon the Commission. The Government settled the first controversy by removing the Hydro accounts from the Provincial Auditor's department, thus yielding to the Hydro, but representation of the municipalities upon the Commission was refused. The reason for this refusal was clearly that the presence of a municipal representative on the Commission would diminish even the nominal control of the Government and the Legislature. Up till the end of the year 1915, the Provincial Treasury had advanced to the Hydro $13,000,000, while the Hydro had spent $17,500,000, the balance having been expended in excess of the appropriations. These facts were pointed out by the Provincial auditor who added in his report that

the Hydro Commission had "disregarded the essential provisions of the legislation creating it." This report led the Government to introduce and to pass an Act requiring the Hydro to account to the Legislature for all its expenditures. Notwithstanding this episode, the Hydro compelled the Government to change its system of audit, so that the Provincial Auditor was prevented from auditing the Hydro accounts. A special Hydro auditor was appointed whose business appeared to be to ascertain simply that there was a voucher for all expenditures. It was no part of his business to determine whether or not that expenditure had been authorized by statute. In this way, the Government at the dictation of the Hydro diminished its control over it and by so much diminished the security it held over the assets of the Hydro. The yielding of the Government on the question of audit may yet bring the Province into financial tribulation. Mr. McGarry, Provincial Treasurer, said in introducing the Bill concerning the audit of the Commission:

> We had powers and today have powers to regulate expenditures to some extent; but under the working out of it, we could not exercise them. It was the custom for the Hydro to make certain demands each month. The expenditure followed from the Hydro Electric offices and until the returns came in the Treasurer had no absolute knowledge as to the expenditure. This Bill has been submitted to the Hydro-Electric Commission and I think that Sir Adam Beck agrees now with the principle of the Bill.[1]

[1] *Mail and Empire,* April 14, 1916.

The original Bill seems to have embodied an honest attempt on the part of the Provincial Treasurer to bring the Hydro affairs into something like order, yet he met with sharp criticism from the Hydro party. Sir Adam Beck adopted his customary expedient. He made a demonstration. A deputation of two hundred persons from the Ontario Municipal Electrical Association and the Hydro-Radial Association (two of the Hydro bodies organized for purposes of demonstration when required) was launched against the Ontario Government on April 18, 1916.

Mr. J. W. Lyon, one of the most prominent Hydro enthusiasts, said:

> We want this business as a municipal enterprise entirely outside of politics. I myself am a Conservative. We object to having it a Government enterprise and machine.

Mr. G. H. Ferguson[2] replied with some heat:

> I don't know whether or not I may be too sensitive, but I don't like the suggestion from you or anybody else that this Government has any thought of making it a Government machine. You are not warranted in any sense in making such an imputation. . . .

The speakers on behalf of the municipalities objected to the various Hydro Bills coming up at the last moment of the session and said that more time for consideration should have been allowed.

The report adds:

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[2] Then a member of the Hearst Government, afterwards Premier.

It was thoroughly apparent from the countenances and remarks of several of the cabinet ministers that the Government recognized it had "got in wrong" and was battling hard to justify itself.

In regard to the audit, the leader of the deputation, Mr. T. J. Hannigan, presented the demands of the municipalities as represented by the bodies above mentioned. These demands were as follows:

1° That the Audit Bill be tabled until next year or amended to make the Comptroller (who was to audit the accounts) an appointee of the Hydro Commission.
2° That the Chippawa Power development be made a municipal project instead of a Provincial enterprise.
3° That the Hydro-Electric Power Commission be appointed hereafter in the following way: One member by the Chief Justice of Ontario (who was at that time Sir William R. Meredith), one by the Provincial Government, one by the Municipalities purchasing power from the Hydro.
4° That the Hydro-Electric Commission be authorized to proceed at once with the final engineering surveys and purchase of rights of way for the railways now authorized by the municipalities.

Mr. Ferguson asked a member of the deputation whether or not his understanding of the situation was "that the Government would develop the Hydro scheme and then hand it over to the Hydro, the municipalities or anybody else in the future?" The member answered, "Possibly." Mr. Ferguson retorted, "No, positively." In reference to the Audit Bill, Mr. McGarry explained to the deputation that "friction had arisen and that the Premier and he had asked the Provincial Auditor to modify the

language in which he was writing the report because of his attack upon the Hydro Commission. . . . Nobody was trying to take away any power from the Hydro, and if after a year's trial it was found a change was advisable he would introduce legislation next year. He was willing that the municipalities should have an auditor.[3]

The four Bills to which the representatives of the Ontario Municipal Electrical Association and the Hydro-Radial Association objected to so strongly because they did not go so far in promoting Hydro interests as they thought the Bills should, were unquestionably among the curiosities of legislation, even as they stood. What they would have been like had they met the views of the Hydro enthusiasts must be left to the imagination.

The Government was certainly in a difficult position. On one side there were the noisy demonstrations of the Hydro which made their appearance at every juncture in Hydro history, reminding the Government that behind them were the constituencies which placed it and kept it in power and on the other side there were the general interests of the Province which the Government knew they dare not sacrifice without eventual discredit and defeat. The Hearst Government was in a cleft stick. It was eventually defeated; but the Hydro was not really an issue in the election. From a series of

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[3] *The Globe,* April 19, 1916.

causes which need not be discussed here, a Farmer's Government came into power.

The Hydro had no sooner evaded the crisis of the spring of 1916 than in the early summer it encountered another crisis even more serious. This was a power crisis. Owing to the fact that the Hydro had offered "power at cost," "rates to be cut in half," etc.,[4] and that it had endeavored to implement these promises in the larger centres of population, it had induced an enormous demand for power. The municipalities increased their plants for lighting the streets, or installed wholly new plants as in the case of Toronto. There were new demands for electric light for advertising purposes, etc. In addition to all these fresh demands, there came the demand for power for munition factories.

To meet this crisis Sir Adam Beck adopted his usual expedient, he made demonstration by summoning a meeting of the Executive Committee of the Ontario Electric Union of Municipalities. The views of the Hydro party may be gathered from a statement made on July 18, 1916, by Mr. J. W. Lyon, President of the Ontario Hydro-Electric Association:

> Putting it very mildly, I can say that we have been expecting this very thing to happen for at least six months. As for the solution, people must demand the power, and it

[4] Sir James Whitney had even used the rhetorical phrase on an electioneering platform—Niagara must be as "free as air." No one, of course, took this phrase seriously.

will be up to the Government to supply the power. It looks as if the Government would have to expropriate the present power development plants. There will have to be more power developed. . . . It is just possible, too, that the people of Ontario have been having too much regard for the scenery at Niagara Falls. When it comes to a choice between scenery and power, the people will choose the power. I have met men who say that we will live yet to see the day when we will be able to walk across the Falls in our socks, so great will be the demand for power.[5]

The object in stirring up the municipalities was clearly to bring pressure to bear upon the Dominion Government to put a stop to the export of power. The Ontario Government yielded to the pressure and called upon the Dominion Government to put an embargo upon power export.

The Hydro Party had no interest whatever in keeping treaties or in implementing contracts. All that it wanted was "power," and because it wanted "power" it must have it.

The demand for power in Ontario for any purpose had been small before the Hydro agitation began. The agitation had been directed towards obtaining electric power *at cost,* that is, at a non-commercial rate. The Hydro Commission had made an arbitrary rate based, as it said, upon its estimates. These estimates were, as has been shown, fictitious. They were not founded upon any scientific investigation. It is not surprising that the demand became overwhelming. That much of the

[5] *The Telegram,* Toronto, July 18, 1916.

power was wastefully employed is indisputable. Had the price of power been permitted to be regulated in terms of the market, waste would have been prevented and effective demand fully supplied through an advance in the price. Even as it was, an advance in the price would have been the proper course to adopt. But for political reasons the Hydro could not adopt such a course. The whole reason for its existence was the low price and if the low price had been abandoned, the Hydro would have had no reason for existence.

The Hydro was thus encountered by an overwhelming demand at the arbitrarily low price. The Hydro enthusiasts demanded increase of supply and called upon the Government to furnish this increased supply instanter. There was, indeed, a certain reasonable basis for this requirement. The Hydro had enormously stimulated the demand for power by means of its agitation; but it had done nothing to increase the supply. Until the purchase of the Ontario Power Company, it had not generated any power at Niagara. In all the discussions by representatives of the municipalities, the Niagara power question is regarded as exclusively an Ontario question; the interests of the towns and cities on the American side are wholly disregarded.

Before the advent of the Hydro, the power Companies had great difficulty in obtaining in Canada a sufficient market for the power they developed at a price even nearly as remunerative as the price

they could easily obtain by means of export to the American side. The load factor in the chemical and other works in the State of New York was much higher than the load factor of the current used in Ontario, and therefore the power was not nearly so profitably employed in the latter region as it was in the former. Export of power was in reality necessary for the Companies. Power was exported by them under license from the Dominion Government, the Ontario Governmnet having no jurisdiction in such a matter. In faith of these licenses, contracts were entered into with street railways and other enterprises in the United States and later such contracts were made with munition factories there for the supply of power.[6]

Merely because some municipalities in Ontario were clamoring for power at what under the circumstances was a ridiculously low price, it appeared that the people of the towns on the American side who were willing to pay a reasonable price for the power were to be subjected to a stoppage of their street railways and their street lighting systems and the factories, including munition fac-

[6] "If the Canadian Government wishes to expropriate the power and break its agreement with the United States, I suppose it can; but I do not think the Ontario Government would do anything like that—break its agreement with the power companies. The Ontario Power Company is importing about 60,000 H.P. to this side of the border and it is used by their customers in Lockport, Rochester and as far east as Syracuse, where it lights the city and operates the trolley cars as well as operates many small manufacturing plants." Mr. Langdon Albright of The Ontario Power Co., speaking at Niagara Falls, N. Y. *The News*, Toronto, July 19, 1916.

tories, were to stop operations. If export of power were brought to a sudden stop as the Hydro Party demanded, the power Companies would be exposed to actions for damages for breach of contract, and the Dominion Government would be exposed to sharp remonstrance on the part of the Government at Washington.

There can really be no argument on such a question. The Hydro brought the crisis upon itself, through its arbitrary fixation of a rate for power which induced an abnormal demand insusceptible of satisfaction by any suddenly adopted means. The Ontario Government had shown itself singularly regardless of contracts made by itself. It had simply canceled these contracts; but it could not adopt the same procedure by legislating out of existence an international agreement to which it was not a party, nor could it interfere with contracts made in terms of that international agreement.

The Municipal enthusiasts neglected to take into consideration also the important fact that the quantity of water which can be diverted from Niagara is limited by Treaty and that the limitation is due primarily to the necessity of preserving the level of Lake Erie, alike in the interests of navigation and in the interests of the towns along its shores. The power crisis, after all the Hydro steam had escaped, was met by compromise and the Hydro Party had to be satisfied with things as they were.

Had the Hydro simply raised its price, it would have been deprived of occasion for demonstration, but it would have promoted an immediate economy of power.

In his addresses during 1916 and 1917, crucial years for the Hydro, the Chairman of the Commission and his henchmen appealed for support of the Hydro on all kinds of grounds. The Hydro would make Ontario independent of the United States in respect to coal; the Hydro would relieve the shortage in pulp because it would supply power for the pulp mills; the Hydro would solve the problem of the returned disabled soldier. If the Chippawa project were carried out, "There would be no difficulty in making available 1,000,000 H.P. using only the water provided for under the waterways treaty."[7] The arguments for Hydro-radials were similarly inflated, although they were frequently inconsistent with other Hydro projects. At the moment when Hydro-radials were being urged, projects for the electrification of the steam railways were also brought forward. By some remarkable process of reasoning, the power available from Niagara Falls and from other water-powers in Ontario was regarded as sufficient to supply with power all the railways, all the radials which were projected, and practically all the industries as well as the municipalities and domestic services. "We

[7] *Daily News*, Toronto, February 16, 1917.

would displace at once forty to fifty million tons of coal per annum. With coal at $5 per ton this would be $200,000,000 a year."[8] The most varied schemes were proposed involving the embarkation of the Hydro Commission into intricate businesses with which none of its members were in the least degree acquainted. "We have a pulp mill, we operate a pulp mill in the Trent district. We have an output of 35 tons per day. . . . I often wonder if it would not be a good idea to establish a newspaper mill and help the newspapers of Ontario. If public support were behind the enterprise there is no reason why a paper mill should not be established. You will never get it by legislation or an Act of Parliament. [Laughter] The only way to get this legislation permanently and assured is to go into competition with the corporations."[9]

This is a fair sample of the attitude of the Commission towards industry. It exhibits a characteristic contempt for the processes of law customarily adopted in democratic countries. The way to kill private enterprise is for a public body like the Hydro Commission to start competitive industries, without regard either to legal or economic considerations and then afterwards to insist upon being given legislative authority.

No better example could be found of the thor-

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[8] *Evening Telegram*, Toronto, February 16, 1917.
[9] *Ibid.*

oughly mischievous doctrine and practice of the Hydro.

An example of the reckless rhetoric of the Chairman of the Hydro-Electric Commission may be found in a speech made by him before a public meeting at St. Catharines held in December, 1916. The following extract is from *The Toronto Telegram,*[10] one of the most ardent of the Hydro newspapers:

> It was Sir Adam himself who swept the obstacles away and carried what was meant for a hostile meeting into a cheering Hydro crowd. He pointed to the Chippawa Creek power scheme. "That entails an expenditure of ten to fifteen million dollars, and I challenge any man to get up and say that he doubts its success. I want to make a statement tonight that that plant will be completed in time and completed within estimates. Why? Because we allow 25 to 30 per cent for contingencies." This was in answer to a criticism that at the present time no one could estimate what the radials would cost. And then to a statement that Hydro power and Hydro radials should not be mixed: "I mix them; I shake them up. It is only by collusion that they can be made a success. I am not here to promote Hydro radials or Hydro power. All I ever got out of it is a chance to cook my meals by Canadian electricity at half what it would cost with American coal."

Apart from the mere nonsense in this speech as, e.g., "I am not here to promote Hydro radials and Hydro power," when everyone knew that was the sole reason for the speech, the "estimates" upon which he based his plea for public support were

[10] *The Toronto Telegram,* December 21, 1916.

exceeded by 400 per cent in the case of the higher, and 600 per cent in the case of the lower "estimate."

Inexorable fate proved that these were not really estimates but merely visions. If they were made by technically competent persons and published as they were made, they turned out none the less to be visionary. If the estimates really made were suppressed and figures substituted of such a nature as to induce public support by understatement of the obligations to be incurred, the "estimates" were also none the less an effort of the imagination. In his reference to cooking, perhaps, Sir Adam wished humorously to suggest that the Chippawa estimates had been subjected to this process. His imagination had undoubtedly run away with him when he spoke of the cost of cooking by electricity being half the cost by American coal and of the sole advantage to him of the Hydro having been the opportunity to use an electric stove. He forgot to mention the trifling circumstance that he had been drawing a substantial salary as Chairman of the Hydro.[11]

In October, 1916, after protracted litigation, the Toronto Electric Light Company was required in accordance with a decision of the Judicial Committee of the Privy Council in London to remove its

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[11] Although the Companies purchased by the Hydro were wound up, the Chairman of the Hydro was paid also as Chairman of each of these companies. The total of his emoluments came to a considerable sum.

poles from the streets of Toronto and to put all its wires under ground. The Hydro Commission afterwards acquired the business of this Company, but the appearance of the City streets demonstrates to what a slender extent the obligation imposed upon the Company has been implemented by its successor.

In December, 1916, while the Hydro Party were using the demand for power for munition purposes as a means for getting complete control of Niagara Power by prohibiting exportation of power and by preventing the power Companies from producing at their maximum capacity, the situation was accurately described by Mr. (afterwards Sir) Joseph Flavelle. Mr. Flavelle was at that time Chairman of the Canadian Munitions Board. His business was to secure in Canada the greatest possible supply of munitions for the conduct of the war. Speaking in Sherbourne Street Methodist Church, on December 17, 1916, he said:

> During the time I was in London, I cabled a message from the War Office about business, and the answer came back from Canada that it could not be carried out as, it was alleged, there was no power. When I arrived home, I found the streets and stores illuminated for Christmas shopping. Why should this be? In order to provide more electrical power for munition plants, the shops should be closed when it is necessary to use power to light them. . . . In London and in Paris at night it is as dark as the darkest night in a swamp.[12]

[12] *The Telegram*, Toronto, December 18, 1916.

The results of an investigation by Mr. D. H. McDougall, President of the Canadian Electrical Association, into the methods of the Hydro Commission were contained in an address delivered by him at the annual meeting of the Association held at Ottawa in April, 1918. The address was referred to a Special Committee and on the recommendation of that Committee the address was adopted by the Association. The principal points in the address in which reference is made to Hydro affairs are as follows:

The outstanding example of failure to live up to contract obligations in the service of electric power in Canada, during the past year, is the case of the Hydro-Electric Commission of Ontario, which with an unprecedented lack of foresight, made contracts for larger amounts of power than it was able to supply. The total amount of this shortage has been stated to be 100,000 H.P.; but unlike the members of this Association the Commission has so far been able to escape the consequences of this selling short of power, as it has refused to recognize the claims of its customers, based on the solemn contracts signed by it, and has pleaded that its shortage has been caused by the war.

It is hard to believe that such immorality would be protected by the Crown and that millions of dollars invested in plants depending on government contracts for their power should be shut down when many of them would otherwise be turning out munitions . . . but for this breach of faith.

This Commission, in spite of its lack of business ability, is able to secure large sums for construction work, amounting to about $20,000,000 a year because its undertaking is supported by the Government; although the works it is building cannot be of any service to the country for years to come, long after the war will surely be over. In the meantime, it is diverting this money so much needed for

war purposes from the use of the people of Canada. The amount of money expended by the Hydro-Electric Commission so far in transmission and distribution plants is about $70,000,000 and the estimated amount of taxes lost to the people, which they would collect from privately owned companies with similar properties, is about $1,500,000 per year.

An example of the arbitrary use of the powers with which the Hydro Commission had practically endowed itself and of the method by which it controls municipal action and suppresses the freedom of the local activities, is to be found in the case of the City Council of Niagara Falls, Ontario. The Council in order to induce a manufacturing company to erect a plant offered to supply power at $10 per horsepower, but the Hydro Commission imperatively required the Council to charge the company $14 per horsepower. This occurred in October, 1916, while the Hydro was advertising itself as the sole means of getting "cheap power." The Mayor of Niagara Falls very naturally denounced the Hydro Commission. "No Czar or Kaiser," he said, "could act in a more high-handed manner."[13]

A crisis which continues without any visible immediate end is the rate crisis. It must always be a difficult question to decide at any moment what the price of a public service would have been had it never been monopolized by a public authority and had it always been fully subject to the forces of competition. In a certain sense monopoly, even

[13] *The Globe*, Toronto, October 14, 1916.

of a public authority, is invariably exposed to competitive influences. For example, if a public authority increases the price of its monopolized street railway service, beyond a certain point, people will walk for short distances and only ride upon long journeys. Since the short-distance traveler pays much greater mileage than the long-distance traveler, the system suffers by this diminution or elimination of the short-distance traffic. The rate charged for the long-distance traffic or the uniform rate if it be high is limited by the rates charged by other means of conveyance. Similarly, a high rate for electric lighting will lead to the increase in the use of gas or oil or other means of illumination. If a city is charged more than a certain amount for electric light, there will be a tendency to use less of it. Thus, even public monopolies of public utilities are subject to competition and are not monopolies in the strict sense.

The rates charged by a public authority for individual services to the public are invariably based to begin with upon an arbitrary rate. The rate of postage for example of 2 cents for a letter weighing an ounce is not based in any way upon the cost of the service of handling and delivering, but is a purely arbitrary rate. So a uniform rate of 5 cents or of 7 cents for a continuous or "transferred" journey upon a street car system operated by a public authority is an arbitrary fare. If the service is to be economically conducted the service must

be adapted to the fare, not the fare, which is inflexible, to the service. In the event of a 5-cent or 7-cent fare being found to be unremunerative unless the service is curtailed, the curtailment of the service must lead to public remonstrance and if the fare is increased public remonstrance must follow also. If one or other course is persisted in, public hostility ensues. The experience of municipal elections shows that from causes which seem at first sight obscure but which, upon investigation, are intelligible, there comes a period of more or less instability in the City government. The members who were instrumental in raising the fares or in diminishing the facilities disappear and others take their places. These may not be pledged to adopt a different street railway policy, but unless they do so, they also disappear and so on.

An arbitrary fare for any public service administered by a public authority amenable to public pressure through the polling booths is thus not easily altered, no matter what economical considerations might determine alteration.

The Ontario Hydro-Electric Power Commission is encountering a rate crisis. It had encouraged the use of electric heaters for domestic use. In many houses built during the past few years, either by those who intended to occupy them or for sale, such heaters were installed and electric heaters were also installed in older houses. In consequence of the financial condition in which the Hydro-

Electric Commission found itself, it issued an edict that the rate for electricity for heating appliances was to be increased to a practically prohibitive rate. There was a public outcry and the edict was withdrawn. Sooner or later the Hydro must increase its rates for domestic lighting. These rates were fixed originally in a perfectly arbitrary manner at a ludicrously low rate in the centres of population. The purpose of fixing the rates at so low a point was to ensure political support for the Hydro. So successful was this manœuvre that the political parties vied with one another in supporting it. No criticism of its expenditure was offered either by the Government or by the Opposition in the local Legislature. The sole criterion of the success of the Hydro was the cheapness of its power for domestic lighting. That for all other purposes its rates were relatively high attracted no attention. That its ludicrously low rates for domestic use could not by any possibility be sustained indefinitely without heavy cost to the taxpayer was also disregarded. The Hydro had made a bid for political support and got that support by bribing the domestic users of electricity and by vastly increasing their number by means of the bribe of low rates.

It is quite evident that these rates could be increased by doubling or even by trebling them, but the Hydro Commission is afraid to attempt this operation. So long as the Hydro administration is dominated by political motives, and it will be so

dominated so long as the present administration continues, no attempt will be made to increase the rates for domestic purposes, or if such an attempt is made, it will in all probability meet the fate of the attempt to increase the rates upon electricity used for heating.

If the present Hydro Commission were wholly discharged and a new Commission composed of technically qualified persons were appointed, the raising of the rates is a certainty. But when the rates are raised, public enthusiasm for the Hydro based as it has been upon the lowness of the rate, and upon that exclusively, must evaporate. The new technical Hydro Board, if such a body were appointed, would inevitably suffer from the opprobrium of the public. Opprobrium would not necessarily be merited by the new Board, but this circumstance would not affect its unpopularity and urgent demands would undoubtedly be made to reintroduce a political element on the ground that a public utility operated by a public authority must be controlled by public representatives whether they are technically qualified or not.

Whatever the future may have in store for the Hydro, it encounters at this moment a sharp rate crisis. The rates for domestic use and even for street lighting must be revised upwards and the users of the future must be called upon to pay not merely a price which will cover the cost of the electricity they use but must also cover a portion of

the cost of the electricity used by them or by their predecessors during the past few years. This crisis is pressing hard upon the Hydro Commission at the present moment. How they will deal with it remains to be seen, but the sooner they seat themselves on the stool of repentance and admit that *all* their estimates of the cost of construction of their plant and of the cost of power were wildly astray, the better for the credit of the Province. The crisis can only be met otherwise by raising more capital and by taking out of further loans the wherewithal to provide fictitious sinking funds. This policy which has hitherto been pursued must simply add to the burdens of the Province and result in a continuance of waste of power.

XI

THE HYDRO-ELECTRIC POWER COMMISSION
FOURTH PHASE

The Hydro Radial Project

THROUGHOUT the year 1916, the agitation of the Hydro Party was devoted largely to attempts to work up the cities to demand interurban electric railways, as well as to incite the small towns and the farmers to call upon the Provincial Government to provide transport for them and their products by means of a Provincial radial system. No real estimate of the cost of this enterprise was ever placed before the people. Various figures were offered between $150,000,000 and $200,000,000. The Hydro Party explained that there was no idea of beginning construction of the lines until peace had been concluded; but at the same time they insisted that the Government should proceed to purchase rights of way. Since a large proportion of the total expenditure must necessarily have consisted of the sums involved in such purchases, the Hydro project could not have been carried into effect, even thus far, without embarrassing the Province of Ontario because of the difficulty of

finding the money during a period of acute financial strain. Moreover, the operation of finding the money would necessarily have crippled the Allies in the conduct of the war. The Hydro Party was not in the least interested in the grave national and international crisis. It was interested alone in the promotion of its political schemes. To the credit of the Provincial Government, it did not take the narrow Hydro view. As a consequence of the attitude of the Government, the displeasure of the Hydro Party was incurred. As usual a demonstration was devised. A meeting of the Radial Union was held in Toronto in August, 1916. The President of the Union, Mr. J. W. Lyon, of Guelph, denounced the Government vigorously.

> We should protest against this red tape in "regard to this enterprise." . . . The Union unanimously passed a resolution, moved by Mr. J. W. Lyon . . . asking that
>
> (1) Orders in Council be passed as requested from time to time, providing funds for purchase of right of way.
>
> (2) That legislation be passed to take over the Chippawa Creek power development and to build and operate it.
>
> (3) That the Hydro-Electric Railway Act of 1916 be repealed (except clause 4) as being ambiguous and unnecessary.
>
> (4) That legislation be passed divorcing the Hydro Power Commission from any department and from the control of any Government Department.[1]

[1] *The Daily Star*, Toronto, August 31, 1916.
This meeting was described in the report as a meeting of the Radial Union; it was really a meeting of the general executive of the Ontario Hydro-Electric Association. It was attended by the Mayors and reeves of forty municipalities, although there was no proof that these municipalities were unanimously in favor of the Radial scheme.

The latter part of the resolution relates to the standing quarrel between the Government and the municipalities regarding the ownership and control of the whole Hydro enterprise. The clauses in question, however, had an important bearing upon the Radial question because they implied an intention on the part of the Hydro Party to set up an organ of government alongside the Government of the Province and independent of it and of the Legislature for the purpose of carrying out and operating an extensive system of transportation by means of capital supplied by the Provincial Treasury and in competition with the national railway system operated by the Dominion Government. On the day following the demonstration above described, another demonstration was made at Hamilton, Ontario, on September 1, 1916, where Sir Adam Beck urged that the Chippawa Creek project be taken over from the Government by the municipalities and that the Hydro be made a municipal enterprise pure and simple. Controller Morris, acting Mayor of Hamilton, declared that "'the people are impatient at the delay in the development of the Provincial Hydro Radial plan' . . . 'we are going ahead with our plans and this meeting has been called to inaugurate a campaign to bring these matters to a head.' Mayor Burgoyne, of St. Catharines, also spoke on behalf of Hydro Radials and urged that they could not be completed too soon."

The pressure of the Hydro demonstrations led by Sir Adam Beck was so severe that the Government found itself in a quandary. Either it must capitulate to the Hydro and commit the Province to expenditure of an indefinite amount or it must offend the Hydro and run the risk of being thrown out of office by an adverse vote engineered by the Hydro. The Government avoided this painful dilemma by appointing a Commissioner to investigate. They chose Mr. Justice Sutherland, a conscientious lawyer and judge who was quite certain to look at the subject from a common-sense point of view and quite unlikely to involve the Government in tribulation. At the same time, Mr. Sutherland was a mild and inoffensive man, at whom neither the Hydro nor anyone else was likely to take umbrage, no matter what might be his decision in relation to the Hydro Radials.

The Sutherland Commission lasted for many months. An enormous amount of evidence was heard. The Radial enthusiasts had full opportunity to ventilate their project. There was much opposition and much criticism. It was evident that even those who were urging "public ownership" were not unanimous in regard to Radials. Large amounts of public money were being expended on roads. Farmers were buying motor cars. The Dominion Government was acquiring two railway systems, both of which tapped the very territory over which these Radial lines were to go. The population of

the Province was not numerous enough to justify so heavy a burden as the Radial system must involve. The drift of the evidence was in the directions suggested. The Report was in consequence decidedly adverse to a general scheme of Radial railways.

The project was not only untimely, it was ridiculous. A few persons in a few municipalities presumed to demand in the name of "public ownership" control of the public exchequer for the execution of a scheme which was devised to confer certain local benefits at enormous cost to the rest of the community and to do so at a moment when economy alike of means and of effort was absolutely necessary to enable the country to survive a struggle which demanded extreme endurance.

Various influences combined to defeat the measure. The Provincial Government saw in the Hydro Radial scheme a device to aggrandize the Hydro even more than it had already succeeded in aggrandizing itself. The Dominion Government saw in the scheme a dangerous competitor to the National Railways and the taxpayer became frightened at the magnitude of the Hydro demands and distrustful of the competence of the Hydro Commission to manage so diversified and unwieldy a series of enterprises as it appeared to be anxious to undertake. The attempt of the Hydro Party to acquire control of public capital on a large scale was thus frustrated. From the point of view of the gen-

eral public that Party had gone far enough towards compromising the credit of the Province. One outcome of the Radial controversy was that the Hydro lost the wholehearted support of one of the newspapers which had previously been one of its main props.[2]

When under the Hydro Electric Railway Act a popular vote was taken upon the project on January 1, 1917, the ground had been thoroughly prepared by energetic agitation. So far as the first scheme of the Commission was concerned, the building of Radial lines between Toronto and St. Catharines passing through Hamilton, the last mentioned city was the key of the situation. The share in the capital proposed to be invested in the new enterprise by Hamilton according to the Hydro estimates was $6,000,000. The other places through which the line was to pass were expected to provide relatively small sums. Only two municipalities voted against the Radial By-law—Hamilton and a small town. The adverse vote of Hamilton did not disclose a large majority against the By-law, but the vote defeated the By-law and also contributed to the killing of the general project. The Hydro, however, proceeded with the acquisition of small lines in the vicinity of Toronto which since their acquisition have sunk from dividend and taxpaying enterprises to a source of continuous de-

[2] *The Daily Star*, Toronto.

ficits involving serious loss to the Province. The Hydro found itself abandoned by some of its leading supporters and the losses upon the lines it was operating caused the larger scheme to drop out of sight.

While the Hydro was formulating its extravagant and ill-digested schemes, it was resolutely opposing every movement towards genuine improvement of the means of communication or of increasing the facilities for obtaining power. The Hydro protested against the construction of a new line of railway between Hamilton and Niagara by the Canadian Northern Railway (afterwards acquired by the Dominion Government). It prevented any of the development projected at Chippawa by the Electrical Development Company, through its attacks upon that Company. It prevented the development of the Toronto Electric Light Company by similar means. It created a feeling of uncertainty and distrust throughout the Province of Ontario, a feeling from which the Province is still suffering and to which must be attributed some part of the present economic stagnation.

The methods of the Hydro in its controversies with municipalities were illustrated in the dispute between the Hydro and the City Council of Toronto regarding the Toronto Suburban Railway. The interest of the Hydro lay in the project of a widespread Radial system which was to be under its control. The development of this system involved

the construction of terminals in the heart of municipal areas. A strong feeling had been manifested in Toronto even among the enthusiasts for "public ownership" against "handing over the city streets and terminal areas to the Hydro." The question came up at the Toronto City Council on November 7-8, 1922. The following is an abbreviated account of what took place.

Sir Adam Beck plucked victory from the jaws of defeat at the meeting of the city council early this morning, but at an appalling price to the citizens of Toronto. Incidentally, it was one of the most pitiable exhibitions of flopping that has occurred in civic history. The council had earlier in the evening (of the 7th) decided on motion of Councillor Foster to leave over the Toronto Suburban By-law for two weeks, following a disclosure of Ald. Singer that . . . the city sections of the Toronto Suburban Railway would be handed over to the city without prejudice to either party. . . . The decision was made by the council, during the absence of the Mayor at a meeting, on a vote of 15 to 8. . . . But what a difference in the morning! When the Mayor returned from the political meeting . . . there was excited hurrying to and fro and consultations with Sir Adam Beck and F. A. Gaby, chief engineer of the Hydro Commission, who had been hastily summoned. Controller Foster was called out and informed what the Mayor and Sir Adam thought about his action. The council was then discussing other matters; but when these were concluded everybody was surprised, when Controller Nesbitt rose and introduced the By-law that had been left over for two weeks. One by one, pre-agreement members of the council, with the exception of Ald. Hunt, led by Controller Foster, turned a handspring, following a speech of Sir Adam Beck, who said it was essential that the By-law be passed as the agreement would be placed before him for signature in the morning. He admitted that the option on the line from

Toronto to Guelph, which will cost the city $3,000,000, and on which there is an annual deficit of $100,000, would not expire immediately, but notwithstanding the lack of new light, the members of the council flopped and reversed their former decision. The crack of the whip could almost be heard throughout the chamber. The members simply bowed in submission because Sir Adam told them they should do so. Thus the vote of 15 to 8 to leave over the by-law was changed to a vote of 14 to 10 to adopt it.[3]

In the course of the debate, Alderman Burgess, who opposed the reversal of the decision, "congratulated Sir Adam on the strength of his lash. I don't like the way Sir Adam comes on the floor and bulldozes the members of this council. He is losing the confidence of the people with his autocratic methods."[4]

[3] *Daily Star*, Toronto, November 8, 1922.
[4] *Ibid.*

XII

THE HYDRO-ELECTRIC POWER COMMISSION
FIFTH PHASE

Political Monopoly of Electric Power and the Investigations Into Hydro Affairs

THE anxiety of successive Governments concerning the Hydro Commission and their uneasy feeling that the public might eventually hold them responsible for the enormous expenditures of public money for which the Hydro was continually clamoring, led to frequent inquiries into the accounts and the proceedings of the Commission. These inquiries were conducted by persons chosen in such a manner that their Reports would be likely to reveal the Hydro in as favorable a light as possible. Yet each of these Reports in spite of the occurrence of a few complimentary phrases which were afterwards widely circulated was of such a nature as to increase rather than dispel the anxiety. The mere fact that many Commissions of Inquiry had to be appointed shows conclusively that the anxiety was not allayed. The Chairman of the Hydro Commission frequently wailed over the "persecution" to which he alleged he was subjected.

This phrase appeared to secure sympathy for him upon Hydro platforms and with Hydro constituencies, but there was absolutely nothing in it. The Hydro Commission had closed the Courts of Law against all complainants; it had control not only of the Government but of all the political parties; it had bought out the generating companies; it had acquired an almost complete legal monopoly of the supply of hydraulic power; it possessed the support of the press. From what quarter could "persecution" come? As a matter of fact, there could be none. What was wrong was that the Hydro methods were with high probability so unsound that frequent Commissions of Inquiry were necessary to make the public believe that they were sound. Had there been nothing wrong with the Hydro, one thoroughly conducted Commission would have been sufficient.

The most important investigations were the Clarkson investigation into the Hydro accounts, the Sutherland Commission especially upon the Hydro-Radial project and the Gregory Commission for inquiry into Hydro affairs in general. The Sutherland Commission has already been noticed. The Clarkson investigation occupied about a year and then the Report was handed to the Government. In spite of repeated public demands for the publication of the Report of Mr. Clarkson, or for at least an indication of the purport of the Report, the Government delayed. Not for about a

year and a half after the Report was handed to the Government was it placed in the hands of the public. When it appeared, there was nothing on the face of it to account for the delay in publication. There was some criticism of the Hydro accounts, but there was nothing of a severely condemnatory character. The Hydro accounts seemed to have survived expert examination. The Report had not, however, the convincing effect that it might have had if it had been issued to the public eighteen months earlier. It is impossible to say through what process the Report passed while it was in the hands of the Government. There may or may not have been much or any alteration in the terms of the Report in the interval, but the Government had itself to blame if uneasy suspicion attached to the Report as it was published. In a case quoted above, the Government had admitted that its own Auditor had been persuaded to modify his criticism of Hydro methods in a report made by him to the Government. There was nothing improbable in the idea that the same procedure might have been adopted a second time. The original conclusions of the Clarkson Report were of interest not only to the taxpayers of the Province but very specially to the municipalities who regarded themselves as the owners of the Hydro. The municipalities were also under the terms of the Hydro Acts regarded by the Legislature as responsible to the Provincial Treasury for the sums

advanced to the Hydro. Exact knowledge of Hydro finances was therefore extremely important in the interests of the municipalities. The form of the Hydro Accounts as published did not give that exact knowledge; hence the Clarkson inquiry. But the Clarkson inquiry did not add much to exact knowledge and the municipalities were still left in the dark.

This circumstance led afterwards to the appointment of the Gregory Commission in which not merely the matters traversed by the Clarkson inquiry but all other matters relating to the Hydro were expected to be subjected to investigation. There can be no question of the uprightness and ability of the Chairman of the Commission, Mr. W. D. Gregory, and the other members, nor can there be any doubt that the investigation conducted by them was painstaking and thorough.

Yet under the influence of the Hydro-Electric Commission the Government elected to involve the Report of the Gregory Commission in the same sort of mystery which seems fated to surround everything connected with the proceedings of the Hydro.

The Report of the Gregory Commission has never been published. Evidence given before the Commission was reported from time to time in the newspapers, but the conclusions of the Report have been suppressed. The Canadian public has been indebted to Mr. Wyer who made an inquiry on behalf of the Smithsonian Institution for such knowl-

edge of the terms of these conclusions as it possesses.[1]

The excuse of the Government for refraining from publishing the Report was that the text was too voluminous.[2] The habitual extravagance of the Hydro is not offset by the paltry economy involved in refraining from publishing a document detailing its shortcomings on the ground that the document in question is too long. The Gregory Report ought certainly to be published in extenso. Unpleasant surmises cannot otherwise be prevented. It is difficult to say whether the present Conservative Government has more to fear from public disapprobation in concealing the facts than in exposing them, since knowledge of these facts is withheld. The present Government inherited the Hydro from its predecessors; and the Government, when it assumed office, was not responsible for the offences either of its predecessors or of the Hydro Commission, but every day's delay in making the public fully aware of the situation, financial and otherwise, of the affairs of the Hydro Commission, imposes responsibility upon the present Government.

The Hydro-Electric Inquiry Commission was ap-

[1] Wyer, S. S., "Salient Findings of Royal Commission appointed to Investigate Governmentally Owned Hydro-Electric Systems in Ontario, Canada," (Columbus, Ohio, 1925).

[2] The Gregory Reports including Evidence comprise about 1200 typewritten pages; but the "General Report which contains the findings of the Commission comprises only 65,000 words." Yet this comparatively brief document has not been published.

pointed on 13th April, 1922. Mr. W. D. Gregory, K. C., was appointed Chairman and the other members were Messrs. M. J. Haney, Lloyd Harris, J. A. Ross and R. A. Ross. The Reports were rendered to the Provincial Government at intervals during the years 1923 and 1924. These documents contain the only critical and authoritative examination of the affairs of the Hydro-Electric Power Commission.

The following passages from the main and subsidiary Reports are fair examples of the conclusions of the Commission.[3]

In February, 1911, the Prime Minister (Sir James Whitney) introduced a bill in the Legislature to take away the control of the power enterprises initiated by the Commission and vest it in the Ontario Railway and Municipal Board. "There is some doubt," said the Prime Minister, "as to whether the jurisdiction over the Power system should rest with the Hydro-Electric Power Commission or should be under the control of the Railway and Municipal Board." (*Globe,* 3rd Feb., 1911.) Evidently strong pressure was brought to bear upon the Government because

[3] The passages from the Reports given in the text have been taken from an official copy to which the author was given access. Many extracts from these Reports were published by Mr. Samuel S. Wyer who was asked by the Smithsonian Institution to investigate the Hydro. His Report was received by the Hydro Commission and the Hydro press with great hostility. The Extracts in question were published by Mr. Wyer in vindication of his conclusions. There can be no doubt that they fully confirm Mr. Wyer's statements. See Wyer, Samuel S., *Niagara Falls: Its Power Possibilities and Preservation,* Smithsonian Institution, Washington, D. C., 1925, and Wyer, S. S. *Salient Findings of Royal Commission appointed to investigate Governmentally owned Hydro-Electric systems in Ontario, Columbus, Ohio, February* 11, 1925.

when the Bill came up for second reading, the Prime Minister asked that it be allowed to stand on the Order Paper indefinitely, explaining that, "I am not disposed to press the Bill in its present form . . . because whatever its present form may be there are several provisions which experience has shown the necessity of being added." (*Globe,* 3rd Feb., 1911.)

In October of the same year, Sir James Whitney, in making the announcement of the date of the Provincial Election, issued an address to the electors in which he said: "In our opinion the time has come when, having regard to the conduct of public business under our system, the Hydro-Electric Power Commission should be discontinued and a new Department of Power created which could take charge of this great work, and the head of which should be a Cabinet Minister." Exactly one month after the election and its return to power, the Government announced that the proposal to create a Department of Power had been abandoned. (Report on History and General Relations, pp. 51 and 52.)

The plain inferences are that the Hydro Commission refused to be controlled by the Government and that its political power was sufficient to maintain its position.

The powers of the Commission in respect of the regulation and control of municipal action and operation have . . . been greatly extended by various amendments to the Act of 1906, and it may safely be assumed that if the Commission should be removed from all control of, or connection with the Government, the same regulation and control of municipal action and operation would be exercised by the Commission, and possibly more autocratically than at present when the approval of the Lieutenant-Governor in council is required for some dealings between the Commission and the municipalities. (Report Cited, pp. 53 and 54.)

The inference here is that when the Hydro Commission was clamoring for freedom from "politics," it was really demanding a free hand in dealing with the municipalities. The municipal enthusiasts who joined in the clamor had evidently no idea of the consequences to the municipalities of a completely autonomous Commission.

The financial relationship between the Commission and the Province has changed very materially since 1906. Under the Act of 1906, the Lieutenant-Governor in council was authorized to raise, by way of loan on the credit of the Province, the funds required for the work of the Commission. These funds were to be paid over to the Commission and audited and accounted for in the same manner as the public accounts of the Province. Under the general law, then applicable, appropriations were voted annually by the Legislature to meet the estimated requirements of the Commission for the ensuing year. These appropriations could not be exceeded, and (they) lapsed if not paid over during the period for which they were made. The Commission was required to pay over to the Provincial Treasurer all monies received by it from the municipalities, railway and other companies under the Act. It was thus in the same position as the Departments of the Government.

Under the present Act the provision as to the Lieutenant-Governor in Council raising funds and paying same over to the Commission remains practically the same as under the original Act; but amendments have provided for the payment over to the Commission of Appropriations upon requisition of the Chairman of the Commission in such amounts and at such times as shall be stated in the requisition and direction, notwithstanding anything in *The Audit Act* contained. The Commission has the right to issue its own bonds and the Lieutenant-Governor in council is authorized to guarantee them. . . . The Government has

power to borrow or guarantee payment for the Commission to an unlimited extent. In guaranteeing bonds or contracts of the Commission, it could pledge the credit of the Province to the extent of $100,000,000, or indeed any sum, without consulting the Legislature. The giving of such powers to the Government, is, we believe, without precedent. (Report Cited, p. 55.)

This is one of the gravest conclusions of the Gregory Report. Not only has the Hydro financial legislation reduced the accounts of the Government to confusion, but it has imposed a risk of indefinite magnitude upon the Province.

The Commission does not now pay over to the Provincial Treasurer all monies received by it, as required by the Act of 1906. The Commission applies its income to operating expenses, the setting up of reserves, etc., and only the sums received by the Commission on sinking fund account are required to be invested in Provincial securities and delivered to the Provincial Treasurer. (Report Cited, pp. 55-56.)

. . . While the Legislature has widened the powers and increased the authority of the Commission, the Commission, as we have pointed out in the Reports already made, has frequently gone far beyond even the wider powers given to it. On many occasions when it has exceeded its legal powers, it has gone to the Government or Legislature for authority afterwards.

A compliant Legislature having from time to time ratified and confirmed illegal acts of the Commission, and disapproval by the Governments of the day of these and other illegal acts having been seldom expressed when brought to their notice by the Auditors, the Commission was undoubtedly encouraged to continue to disregard the law.

The spectacle of the Commission, or rather the Chairman of the Commission, exceeding legislative appropriations by

millions of dollars, spending for one purpose millions entrusted to the Commission for other purposes, making agreements clearly beyond the powers of the Commission, while Auditors protest and Governments look on, has its humorous as well as its serious side. (Report Cited, pp. 56-57.)

The political machine by means of which the demonstrations referred to in a previous chapter were organized was known first as the "Western Ontario Power Organization" and afterwards as the "Western Ontario Municipal Niagara Power Union." The link between the Commission and the municipalities is the Ontario Municipal Electric Association.

The Commission has frequently availed itself of the help of the Association or its officials, in promoting the objects of the Commission. Up to and including 1921, the Association received from the Commission an annual grant which appears to have been its main source of revenue, and it has to this extent been subsidized by the Commission. . . . It has been said, with much justification, that at times the Association has been the instrument of the Commission itself. We are informed that since the fiscal year 1922, the grants from the Commission to the Association have been discontinued; but for a portion of the time at least, since then (the salary of the Secretary of the Association) has been paid to him directly by the Commission. Mr. G. T. Clarkson, the Auditor of the Accounts of the Commission, has frequently stated in his reports to the Government, that the authority of the Commission to make these grants to the Association was open to question. (Report Cited, pp. 58-59.)

After stating to what extent the Hydro Commission may properly advertise its business, the Report says:

But the Commission enters upon highly debateable ground when it goes into a municipality to take part in an election being held to decide from what source the municipality will secure its power. A private company would be likely to take an active part in a campaign of this character on the side of those who advocate the purchase of power from it, but the Commission is in a different position from a private company. It is a public body and receives its support from the entire community. It cannot conduct a campaign with those who advocate entering into a contract—with it without antagonizing those who do not. We have already pointed out the course it took at Cornwall, where, without even the request of the municipality, it actively entered into the campaign against the purchase of power by the municipality from a private company. The supporters of the purchase proved to be a majority of the electors, and the action taken by the Commission aroused strong local feeling against it. Not only did the Commission take part in the campaign at Cornwall, but after the election there, it raised the price of power which it had before quoted to a private company proposing to establish itself in the Cornwall district.

In our report on the Wasdells System, reference is made to the attempts of the Commission to prevent the town of Orillia, which successfully operates a power plant of its own, from securing customers in surrounding districts. The action of the Commission in this case also aroused strong local feeling against it.

The expenses which the Commission incurred in the Cornwall campaign were paid out of grants of public monies made by the Province to it for making preliminary surveys, preparing estimates and so forth. (Report cited, pp. 59-60.)

The Chairman of the Commission, in the past, has frequently shown impatience at the suggestion that the Government should, before advancing the money asked for, look into the merits of the schemes for which it is asked. It seems to have been assumed that it is not for the Government to ask why, or to make reply, but to provide the

funds. Frequently announcements of proposed developments have been made without having first been submitted to the Government for approval. The newspaper files of years gone by tell many an interesting story. They certainly show that the Chairman is an expert in the art of creating and organizing public opinion. The procedure followed before applying to the Government for money appears often to have been much as follows: before or after the announcement of project or policy is made by the Chairman, meetings are held, resolutions endorsing the scheme are passed and deputations arranged for. Soon the Hydro Press (so-called) is heard from in support of the proposed undertaking. When the matter is taken up by the Government; it has to deal with a project which the Commission has already launched and for which a vigorous propaganda is already in full blast. The Government cannot disapprove of the project without running counter to a large body of opinion that has been created in advance. If a Government once disapprove of or question the project, the "Hydro Press" begins to roar and the Government is charged with "political interference." As a rule Governments object to being placed in such a position. (Report cited, pp. 76-77.)

If the minutes of the Commission are complete, they show that announcements of the policy of the Commission, in respect of future developments, have been made from time to time by the Chairman without the subject having first been dealt with by the Commission. Sir Adam Beck has undoubtedly regarded himself, and has been regarded by others, as in effect the Commission itself. His forceful personality has played a large part for years in settling—or unsettling—the relations between the Commission and the Government. He has a large and devoted following and has become a force that is recognized by all political parties. His arbitrariness, his lack of consideration—to state it mildly—of others, his absolute disregard of law or anything else that stands in his way, should not blind anyone to the fact that he has rendered great and invaluable service to Ontario. (Report cited, p. 78.)

In authorizing the Commission to postpone the time for beginning to make contributions to the sinking fund in respect of any development for a period of five years from the date of completion of the work, the Legislature apparently intended to make it possible to help out those systems where the demand for power at first did not equal the supply. The Commission, however, has given the extension not only where the supply exceeded the demand, as in the case of Nipigon, but in cases where the demand has from the beginning equalled or exceeded the supply, as in the case of Queenston-Chippawa. In the latter case there would appear no reason why the payment of the borrowed money should be postponed. (Report cited, p. 87.)

The extension of the sinking fund period on the Niagara System entirely upsets the fundamental equality supposed to exist among the Systems, which the Hydro-Electric movement contemplated. The capital investment in the Greater Niagara System represents 80% of the capital investment in all of the undertakings of the Commission. The power supply of this system is practically four times as great as the total combined loads of all other systems, and the average cost of power is from 17% to 63% lower than the cost of other systems, with the exception of that of the Ottawa and Muskoka systems. If, then, the Commission makes an exception in the case of the Niagara system and fails to distribute "power at cost on an equal basis to all," it follows that the popular conception applies only to a relatively small proportion of the works of the Commission and that special consideration is shown to the Niagara system, which least requires it, while less prosperous systems are made to adhere strictly to the terms of the Power Commission Act. (Report cited, p. 88.)

It may be said, we think, without the slightest reflection upon any of those who have been members of the Commission, that for years past there has been no one upon it who, in the event of the resignation or death of Sir Adam

Beck, would have been qualified by training or experience to take the Chairmanship. Is this a satisfactory state of affairs? (Report cited, p. 92.)

The evidence taken by the Commission of Inquiry showed that there has been widespread dissatisfaction among the municipalities with the conduct of affairs by the Hydro-Electric Commission. It appears that in the same manner as the Hydro Commission rode roughshod over the Legislature, the Government and the generating Companies, it rode over the municipalities. The consequences were accumulated grievances on the part of these bodies. (Cf. Report cited, pp. 93-94.)

The views of the Commission and those of the Government regarding the status and functions of the former have been widely divergent. The Government regarded the Commission as an administrative department. The Commission regarded itself as autonomous. In practice when an administrative regulation—regarding audit or finance, e. g. —was applied to the Hydro, the regulation was immediately suspended. The slogan of the Hydro clacque was invariably "Hands off the Hydro." The evidence of the failure of the Hydro to adhere to the estimates published by the Commission and to implement the promises made in its name is overwhelming. Page after page of the Reports of the Commission of Inquiry is filled by detailed examples.

Neither the Government nor the public were at any time fully informed of the proceedings of the Hydro for which the Government was politically and the public financially responsible. (Cf. e. g. Report cited, p. 97.)

It has been clearly shown that the Commission, if not in form, has been in fact a thing apart from the Government. Its engineers are responsible to it alone. It has had its own policies and its own plans. . . .

No man can, with justice to himself, be at the same time both advocate and engineer. If the Commission, instead of being financed by the Province, were financed by a private corporation, and estimates of a proposed development were submitted and application made for a loan thereon, the corporation would not accept the estimates of the Commission's engineers, however high their character or professional attainments might be. It would submit the estimate to its own engineers and base its action on their report. Can the Province afford to take less precaution?

With one exception, every estimate for a proposed development which has been submitted by the Commission to the Government at the time authority has been sought to begin the undertaking and which has been investigated by us, has been exceeded—some of them very largely exceeded. It is surprising what a large proportion of the total outlay of the Commission represents an outlay not contemplated by the Government when it authorized the developments. (Report cited, pp. 97-98.)

In the case of the construction of the Third Pipe Line in connection with the Ontario Power plant, the Government guaranteed the cost.

The estimate of the cost submitted by the Commission was $1,806,000, the actual cost was $3,514,676. (Report cited, p. 99.)

> Can a Government afford to do business in this way? Can it afford to authorize the construction of great development after great development each year without being fully and accurately informed? It is for the Government to say. (Report cited, p. 99.)

Doubt may be permitted that such estimates were really those of the engineers of the Commission. The fact of the great divergence of estimate and cost suggests that the estimates were those of politicians and not those of professional engineers.

The General Report of the Inquiry Commission[4] discusses the relations of the Hydro Commission and the Province, shows the extent to which the Province has been financially committed by the Commission, frequently without previous legislative authority, and even without notification until after the expenditure was incurred. It discusses also the relations between the Hydro Commission and the municipalities and shows the extent to which these are at the mercy of the Commission which enjoys exceptional powers with regard to them. It also shows that the amount of money invested by the Province in the undertakings and the amounts guaranteed by the Province greatly exceed those which the municipalities have invested or for which they are in any degree responsible.

> The general position which appears to have been taken by the Commission, and many of its supporters, is that the

[4] This General Report is contained in two volumes.

Treasury of the Province should be placed at the disposal of the Commission, and that the Government should without question provide for the Commission such funds as it may from time to time require, to be administered as it may see fit, for those municipalities of the Province, which have entered or may hereafter enter into contracts with the Commission for the supply of power. If this view were accepted by the Government and the Legislature, the credit of the Province would be placed largely in the Commission's hands. The attitude of the Commission does not tend towards allaying the suspicions or removing the objections of those portions of the Province which so far have been unable or unwilling to share in any benefits of public ownership and operation of a great public utility, for the financing of which, they as part of the Province, are responsible, nor is it such as to permit harmonious relations between the Government and the Commission. (Report Cited, Vol. I, p. 28.)

SINKING FUNDS

In the administration of the affairs of the Commission, the establishment of Sinking Funds for the repayment of Provincial advances and retirement of other obligations assumed by the Commission and the Province in connection with the construction and acquisition of works, is of prime importance. The subject has received attention in our reports. . . . The salient features are here summarized and attention drawn to existing anomalies arising from the interpretation placed upon Statutory Provisions. The Legislature evidently had sound objects when making provision in the Power Commission Act for the accumulation of a fund in respect of each of the undertakings operated by the Commission which, in a defined period, would be equal to the total capital cost of the undertaking. In the first place, the Province as the banker supplying the moneys for capital expenditures, in addition to receiving interest upon its advances, was to be repaid these; or there were to be deposited with the Treasurer, Provincial securities purchased by the Commission with sums paid by municipal

corporations and others, these securities to be held by the Province as security for its advances made and obligations assumed. In the second place, the repayment of the advances of the Province and release of obligations assumed by it were intended to divest the province of a proprietary interest in the works and properties held by the Commission, and the beneficial ownership thereof was to revert to municipal corporations in proportion to the amounts, with accumulations, paid by them on sinking fund account.

Only in respect of advances by the Province for the cost of works serving municipal corporations under contract with the Commission, do the Statutes relating to the supply for electrical power or energy, make definite provision as to the basis upon which sinking fund payments should be made. The Power Commission Act, however, does definitely provide that all sums received by the Commission from municipal corporations and others shall be invested in Provincial securities, and these delivered to the Treasurer of the Province. Sinking fund accounts have been opened by the Commission in respect of undertakings, the cost of which has been maintained otherwise than by employment of advances by the Province, and the amounts credited to these accounts are held by the Commission and not treated in the same manner as are the payments on account of Provincial advances. We are advised that this position of the Commission is unjustifiable, and that these funds should likewise be invested in Provincial securities and delivered to the Provincial Treasurer.

In respect of certain undertakings no sinking funds have been established for the retirement of certain assumed bonded indebtedness and the liability of the Province for this indebtedness will continue for indefinite renewal periods. The policy of the Power Commission Act undoubtedly was that all municipal corporations entering into contracts with the Commission for supplies of "power at cost," would, as part of the "cost" of power, pay annual sums sufficient to form in thirty years a sinking fund for repayment of the advances by the Province in respect of the cost of the works. The same basis for accumulation of

sinking funds being applicable to all, municipal corporations are all presumably on an equal footing as to that part of the cost of power attributable to payments account of sinking funds. (Report Cited, Volume I, pp. 63-65.)

The Report goes on to say that amendments to the Power Act have relieved certain municipal corporations from the obligation of establishing sinking funds for five years. While this was done by Statutory authority, the Report states that in the opinion of the Inquiry Committee the application of the clause deferring the operation of the sinking fund has been strained by the Hydro Commission in applying it to the Queenston-Chippawa power development.

"This," the authors of the Report say, "in our opinion, goes far beyond the clear intention of the Legislature as expressed in the Act." (Report Cited, Volume I, p. 65.)

The adoption of diverse bases for the establishment and accumulation of sinking funds has resulted not only in causing inequalities and discrimination in annual power rates payable by municipal corporations, but it has also extended the time originally contemplated within which the Province will be repaid its advances and relieved of its obligations, and municipal corporations acquire a full proprietary interest or ownership of the works constructed and acquired on their behalf. The extension of sinking fund period in the case of the Queenston-Chippawa Power Development to forty-five years and the procedure adopted in respect of sinking funds for The Ontario Power Company and the Toronto Power Company, has a very material effect upon the annual cost of power to the corporations in the Niagara System. With the Niagara plants controlled by the Commission operating at full capacity and the full amount of power generated being consumed, the

total amount paid annually for power by the municipal corporations of the Niagara System will be, it has been calculated by our Accountants, at least $800,000 less than if sinking fund payments were made on a thirty-year basis. Extensions and improvements doubtless will be made to these plants and the time when the municipalities interested may expect to acquire complete ownership is receding into the dim future. In the meantime the municipal corporations in the Niagara System are not only benefitting by their favoured location in proximity to the greatest water power of the Province, but they are additionally favoured by discrimination in sinking fund rates.

The total amount at the credit of sinking fund accounts on the books of the Commission on October 31st, 1922, was $2,677,947.09; cash advances and guarantees of the Province and other bonds as of the same date total $150,946,112.59; the proportion the one amount bears to the other represents the relative interest of the municipalities and the Province in the ownership of works controlled and operated by the Commission under the provisions of the Power Commission Act and the Ontario-Niagara Development Acts. The belief has been engendered and kept alive in many minds that municipal corporations will acquire complete ownership of the undertakings of the Commission in thirty years and in the meantime are the real owners subject only to payment of certain indebtedness to the Province. There is no foundation for such a belief, but it is refreshed from time to time by utterances of enthusiasts. . . .
[Since] of the total capital investment in all the power undertakings of the Commission, . . . $134,000,00, only $25,233,528, or about 19%, is being provided for by a sinking fund on a thirty-year basis, it is clear that the statement just quoted is untrue. (Report Cited, Volume I, pp. 67-69.)

After consideration of the reports of our Consulting Engineer upon the works of the several systems, and a full investigation, we find that, while, subject to the approval of the Lieutenant-Governor in Council, a reduction of depreciation rates relating to some of the works of the Commission from those originally prevailing would be

justifiable, a reduction ranging from 25% to 55% in respect of nearly all the undertakings of the Commission was wrong and unsound. The prospective reduction of the renewal fund apparently paved the way for the commendation of the Commission in the public press. The following paragraph, appearing in the press under date of September 14th, 1923, is an example:

"A reduction of rates which affects three cities, thirty-five towns, seventy villages and one township, was formally announced yesterday afternoon at the offices of the Hydro-Electric Commission." (Report Cited, Volume I, p. 74.)

The balances in the reserve for contingencies, although increased in 1922, are still, in all but two instances below the requirements considered adequate by our Consulting Engineer. (Report Cited, Volume I, p. 77.)

The Report also deals with the friction which has arisen between the Hydro Commission and the municipalities in consequence of alleged discrimination as regards rates. (cf. Report Cited, Vol. I, p. 90 et seq.)

Although the Report discusses the question of a flat rate throughout the Province, it forbears to make any recommendation on the subject. (cf Report loc. cit.)

The Commission has stated to us that one of the main reasons leading to the error made in assumed power loads, was on account of the municipalities being over-optimistic as to the amount of power they could consume. This in no way relieves the Commission of responsibility in the matter, for the majority of municipalities throughout Ontario know little of such matters, and place entire reliance upon the guidance and judgment of the Commissioner and his officials. We believe that it is the duty of the Commission to see that its estimates to the municipalities are

based upon loads that may be definitely expected to obtain when the service is installed, and in actual operation. It is little or no comfort to a municipality to be told by the Commission, as many municipalities in Ontario have been told, that, if their load were three times as great as it actually is, the cost of power to them would not be greater than the estimated rate. It is the duty of the Commission to see that all municipalities are dealt with frankly and supplied with actual facts, and not with information based upon hypothetical conditions. (Report Cited, Vol. I, pp. 111-112.)

The General Report also deals with the relations of the Hydro Commission with its employees.

In his evidence before the Commission, Mr. Gunn, Secretary of the Electrical Trades Union, said:

I have not the slightest doubt that Hydro is willing and anxious to save life as much as possible, but it does seem to us a sort of anomaly that the power to make safety regulations for the workers exists in the hands of the Hydro, who are practically the greatest employers of electrical employees in the Province of Ontario. (Report Cited, Volume II, p. 158.)

The Report says that while as a matter of principle, the making of regulations for employees' safety might better be in the hands of an independent body, there is no constituted body in the Province at present more competent to make such regulations than the Commission. (Report Cited, Vol. II, p. 159.)

The problem of inspection of governmental enterprises has been dealt with in a previous chapter. The impossibility of devising adequate inspection of such enterprises is inherent in the operation of them by government, and is one of the most cogent

reasons for restricting the function of government to inspection—for the exercise of which government alone can be safely and adequately endowed with power. The functions of enterprise and inspection cannot be efficiently performed by a single authority.

In respect to the question of taxation of the property, etc., of the Hydro Commission, the Report points out that under the Hydro Acts a comparatively small portion of the property of the Commission is liable to taxation.

> The exemption from taxation given under the Assessment Act results in lowering the cost of power to the consumers, but the gain to the consumers is equalled by the loss to the taxpayers of the municipalities in which the developments are located. Just why the taxpayers of Niagara Falls and the Township of Stamford should pay higher taxes in order that the municipalities of the Niagara System should get cheaper power is a question that does not seem to have been answered to the satisfaction of the taxpayers. . . . If the Provincial Commission and the municipal Commissions were required to pay taxes on the same basis as private companies and individuals, the amount required would not appreciably raise the rates paid by the average consumer for electric service, but would prevent the criticism to which we have just referred. (Report Cited, Volume II, p. 162.)

The question of the Radial Railways referred to briefly in a foregoing chapter is treated at great length by the Inquiry Commission in four separate Reports as well as in the General Report. The four Reports are:

Guelph Radial Railway.

Sandwich, Windsor and Amherstburg Railway and Windsor and Tecumseh Electric Railway.

Hydro-Electric Radial Railways.

Toronto-Port Credit Railway and Port Credit-St. Catharines Railway.

In the last-mentioned report, namely that dealing with the Toronto-Port Credit and the Port Credit-St. Catharines Railways, we point out that this is an instance in which the Commission greatly overstepped its authority with the result that unauthorized expenditures were made, aggregating over a million dollars. The moneys used for buying right-of-way and for other purposes were taken from funds held by the Commission in respect of power undertakings and it had no right to divert them.

This is the outstanding case of breach of trust on the part of the Commission. (Report Cited, Volume II, p. 165.)

There also enters into the matter the question of municipal liability for money expended on the radials. The municipalities strongly dispute any liability on their part and will undoubtedly oppose any attempt to make them pay.

One view of the matter is expressed in the last paragraph of our report on Hydro-Electric Railways. We found that as matters stood, the accounts of the Commission were short over $1,100,000. We understood that as of October 31st, 1923, the Province reimbursed the Commission for its expenditure in connection with the Sutherland Commission, amounting to about $336,000 with accrued interest thereon to October 31st, 1923. If this was done, the Commission's accounts are still short about $780,000. . . . If it should be found that the amount taken cannot wholly be recovered, and if the Legislature does not see fit to make up the loss, the impairment will have to be borne

by Hydro municipalities whose funds have been diverted. Action should be taken as promptly as circumstances permit, for, as Mr. Clarkson (the Auditor), says "it is a very serious matter." (Report Cited, Volume II, pp. 165-166.)

So far as is known, no action has been taken in regard to this deficiency.

At the time of our investigation, the Sandwich, Windsor and Amherstburg Railway and the Windsor and Tecumseh Railway, the Guelph Radial Railway and the Peterborough Street Railway were all losing money. (Report Cited, Volume II, p. 166.)

The loss for the year ending October 31st, 1922 (on the Peterborough Street Railway) was $34,218.20. We understand that in the following year the deficit was less. It seems most unlikely that the railway will pay or that the municipality will take it off the Government's hands. (Report Cited, Volume II, p. 167.)

The Toronto-Port Credit Railway and the Port Credit-St. Catharines Railway have been fully dealt with by us in a separate report. . . . The Commission will indeed be fortunate if it succeeds in realizing enough from the assets in its hands in respect of these roads to pay the trust funds which it wrongfully diverted for them.

In our opinion, the Commission made a great mistake in entering into the radial railway field. It had quite enough on its hands and on the hands of its staff in connection with the generation, purchase, sale and distribution of electric power, to occupy its whole time, and its whole energies. The radial roads have, generally speaking, been a millstone around the Commission's neck. The quicker that it is freed from all connection with them, the better it will be for the Commission and for the Province. The course of the Commission in respect of the Toronto-Port Credit and the Port Credit-St. Catharines Hydro Radials has not only discredited it but has deeply injured the cause of public ownership as well. (Report Cited, Volume II, p. 167.)

Under the Act of 1920, amending the Power Acts, the Commission is enabled

> to act as distributor of power directly to individual consumers in rural power districts and it is given the extraordinary power of imposing as a tax, to be "collected in the same manner as *other* taxes," accounts for power supplied which are in arrears. (Report Cited, Volume II, p. 177.)

The Report makes no other comment on this provision. Since taxes form a prior lien on property, it is evident that the Hydro Commission has an advantage over other creditors and that this advantage imposes a limit upon the amount of credit which an individual user can obtain in general. The Ontario Legislature in this instance has followed the reprehensible practice of the Western Canadian Legislatures in constituting prior liens so numerous that the general credit of the farmer in the West was seriously impaired.

> The Commission has now the right to supervise all electrical work in Ontario whether installed by the Commission itself, the municipal Commissions or private companies or individuals. Though fees are charged for inspections, the revenue since the inception of the Department until October 31st, 1922, has been less than the expenditures by the Commission, by $258,585.53, which has been charged to the Province. Several complaints have been made to us by manufacturers of appliances, electrical contractors and others, that the Commission should not administer the work of electrical inspection. It is claimed that it gives the Commission an unfair advantage over those who are operating privately and it is contended that, in some cases, discrimination has occurred, favouring the work done by the

Commission's employees or those working for the municipal commissions.

On the whole, however, we believe that the work of this Department has been carried on in a business-like and efficient manner, and, while the principle of the Commission doing this work may be open to some question, we know of no better method by which this important work can be accomplished. While, as we have stated, some have complained, others who are competitors have expressed their approval of the present system. (Report Cited, Volume II, p. 190.)

The names of the Commissioners who received remuneration, the amounts paid to each, and the source of funds therefor, from the commencement of the Commission to October 31st, 1922, are as follows:

	Commission	Ontario Power Company	Province	Together
Sir Adam Beck (1911-1922)	$50,000.00	$31,500.00	$66,000.00	$147,500.00
W. K. McNaught (1914-1919)	17,333.00	.....	.....	17,333.00
Hon. I. B. Lucas (1914-1921)	27,000.00	3,083.34	.....	30,083.34
Hon. D. Carmichael (1919-1922)	12,000.00	5,583.34	.....	17,583.34
F. R. Miller (1921-1922)	4,333.33	2,166.66	.....	6,499.99
TOTAL	$110,666.33	$42,333.34	$66,000.00	$218,999.67

(Report Cited, Volume II, p. 193.)

Shortly after the Commission purchased the Ontario Power Company, the members of the Commission and certain of its executive staff became Directors of the Company. As Directors of the Company, they voted themselves additional salaries, at two Directors' Meetings held in June, 1918, and June, 1920. (Report Cited, Volume II, p. 194.)

We are of opinion that the Commission and its staff do not received remuneration in excess of that demanded by

their duties. As a matter of fact, we believe that if the Chairman of the Commission were the President of a private corporation of a similar size, he would receive greater salary than he now does. The same remark would also apply to the other two Commissioners, and to the principal executive heads. The salaries paid to the general staff are, perhaps, a little higher than those paid elsewhere, but on the whole are quite in keeping with the nature of the duties required of them. In considering the matter of remuneration, however, we have found it necessary to comment adversely in our report on the Ontario Power Company, on the manner in which the members of the Commission increased their own salaries, and the salaries of the principal executives of the Commission, by virtue of the position held as Directors. . . . A review of the whole circumstances confirms our belief that the action of the Commission in this respect was improper and in clear violation of the spirit, if not the letter, of the Power Commission Act. The services rendered by members of the Commission as officers of the Ontario Power Company were largely nominal. . . . When increases were thought to be proper, the matter should have been brought before the Government and, if approved, it should then have submitted a proposal to the Legislature. (Report Cited, Volume II, pp. 195-196.)

Our inquiries have impressed upon us the fact that there has been a great lack of co-operation between the Government and the Commission. We have already in this, and in other reports submitted, shown the attitude which the Commission has assumed in its general dealings with the Government. At this place, we desire to point out that the Government has not had the knowledge it should have had of what the Commission has been doing or trying to do, and it has had no means by which it could independently inform itself of the detailed operations of the Commission. We believe it to be of prime importance that the Government of the day be kept constantly and fully in touch with matters relating to the operations of the Commission. In our Report on History and General Relations, we have dealt in

some detail with the suggestion made by Mr. Clarkson, of the appointment of an officer whose duty it would be to keep the Government in close touch with the Commission's operations. (Report Cited, Volume II, p. 199.)

The appointment of the Auditor is in the hands of the Government but his remuneration is fixed by the Commission, subject to confirmation by Order-in-Council. Mr. Clarkson's high personal and professional standing is unquestioned and the members of the Commission hold him in high regard, but we believe it to be wrong to place the fixing of his remuneration (subject to the approval mentioned)[5] in the hands of the body whose accounts he is required to audit. We believe the appointment and the remuneration of the Auditor of the Commission's accounts should be left entirely in the hands of the Government. (Report Cited, Volume II, pp. 200-201.)

It was not until the Spring of 1920, some three years after construction work had been commenced, that the Commission decided to call in a consulting engineer to advise on the matter of costs. The report of this consulting engineer did not suit the Commission and was discredited by it, and the Government made no use of it. The Commission then called in the joint services of a consulting engineer and a contractor. Their report showed that the work would cost almost twice as much as the official estimates in use by the Commission up to the end of 1919. . . . Had the Commission or the Government called in consultants at an earlier date, the Commission and the Government would have had information that the work would have cost much more than the estimates provided. (Report Cited, Volume II, p. 201.)

It [the Government] cannot afford to rely solely upon the estimates of men who are both advocates and engineers and no engineer should be asked to put himself in such a position. (Report Cited, Volume II, p. 202.)

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[5] The Clause in the Power Commission Act providing for the approval of the Lieutenant-Governor in Council had been quoted previously.

During the course of our investigation of undertakings of the Commission it became apparent that, in the interpretation of various sections of the statutes relating to its work and undertakings, there have been differences of opinion. Conflicts and confusion appear to have arisen as to the rights and liabilities of the several parties interested in the acquisition, construction, operation and administration of the undertakings of the Commission. We are advised that in a large measure, this has been occasioned by amendments to certain provisions of the statutes without due regard to the effect of these changes upon other provisions or to the fact that inconsistencies in these statutes have hereby been created. (Report Cited, Volume II, pp. 205-6.)

The hurried manner in which all the Hydro legislature has been introduced into the Provincial Legislature has resulted inevitably in the confusion observed in the Report. The hurry and the confusion are both due to the inexperience and to the lack of professional and technical knowledge on the part of the promoters of the Hydro, and to the weakness of successive Governments in permitting themselves to endorse legislation of an inconsistent and confusing character. The General Report of the Commission recommends very properly consolidation of the various Acts. (Cf. Report Cited, p. 204.)

Statements have been spread abroad to the effect that municipal corporations will acquire complete ownership of the undertakings of the Commission in thirty years, and in the meantime are the real owners, subject only to the payment of certain indebtedness to the Province. As previously stated in this Report, as recently as December 12th, 1923, a newspaper report quotes Sir Adam Beck as saying:

"Under the present system, we have provided for the retirement of the debt on capital investment at the end of thirty years." We have shown previously in this Report, under the subject of "Sinking Funds" how misleading this statement is. Having regard to the fact that about 70% of the total capital investment of the Commission in power undertakings, or over $112,000,000.00, is in the Niagara Development plants and certain subsidiary transmission lines alone, and that of this investment less than 4% is being, or is to be, according to figures submitted to us by the Commission, provided for by a sinking fund on a thirty-year basis, it is clear that the statement just quoted has no foundation in fact.

In recent announcements, and quoting official figures given by the Chairman of the Commission, it was stated that the operation of the Queenston-Chippawa Power Development plant showed a surplus for the first year's operation, of $382,601.24. It was stated that the total revenue from the sale of power for the first year's operation was—$4,164,-719.00, from which figures the so-called surplus is derived. It is intimated that the surplus would be made applicable to depreciation or renewal or contingency account. As a matter of fact, these items must be provided for, and, if they are provided for on an adequate basis, a larger sum will be required than is apparently available. Further, no provision has been made by the Commission in respect of sinking fund, the collection of which it has deferred. It is, of course, known that the Statutes provide that the developments of the Commission must be operated on a cost basis, and therefore there can be no "surplus" or "profit." Notwithstanding all of these things, a "surplus" of $382,601.24 is announced. When submitting the estimates for the Queenston-Chippawa development to the Government, the Chairman announced that 300,000 H.P. could be produced at an annual cost of $6.00 per H.P., which sum would include all interest, sinking fund, renewal charges, and so forth. Instead of the cost of power from the Queenston-Chippawa development being fixed on a cost basis, a temporary and arbitrary rate of $20.00 per H.P. has been fixed by the

Commission, which does not seem low even after making due allowance for the increase in construction costs that occurred while the development was being built and since the original estimate was made. The Commission, when deciding on the rate to be charged, had just as much right to make the price $15.00 or $25.00 or $30.00 per H.P. as it had to make it $20.00 per H.P. If it had selected a price per H.P. of $25.00 instead of $20.00, the surplus would have been much larger. Surely such statements as these are misleading. (Report Cited, Volume II, pp. 208-210.)

In our Report on "Examination of Auditor's Reports for Period 1916 to 1921 Inclusive" we called attention to a statement made by the Chairman (Sir Adam Beck) before the Committee on Water Power of the House of Representatives, Washington. In describing the operations of the Commission, he said: "I may say our accounts are subject to audit by an independent firm of auditors, the firm of Clarkson and Company of the City of Toronto, who stand very high in the estimation of the financial institutions of the city and the country. They audit our accounts; in fact, they pre-audit. There is a running audit, so that everything is checked up fully and thoroughly, giving an assurance that our affairs are administered in a proper way not only to the Commissioners themselves but also to the Treasurer of the Province, and the various municipalities, who receive the annual statement." The Chairman made a similar statement when referring to certain expenditures concerning which he was giving evidence before us.

Questioned by us on this subject, Mr. Clarkson said: "We did not pre-audit. . . . We audited after the event. . . . We were not pre-auditors, neither have we any power or control to say to the Commission—'You shall, or you shall not do this—to prevent the payment.'"

Mr. Clarkson further said that the first report on the Cmmission's accounts which he prepared, was: ". . . nothing but a series of criticisms of the Commission for overstepping authority in one direction or another." (Report Cited, Volume II, pp. 210-212.)

Some of the Conclusions Arrived At

It is impossible for us fully to summarize our conclusions in respect of all of the subjects submitted to us for investigation, even within the scope of this report. There is much material very pertinent to them that can be found only within the reports that we have already submitted to Your Honour, and to which we refer you, but in closing we shall summarize or repeat a few of the main conclusions at which we have arrived.

The principle of Public Ownership of the Water Power of the Province and its development by the people for the people is, in our opinion, fundamentally sound and should be maintained at all hazards in its full interpretation. The Engineering Department of the Commission is made up of men of high professional qualifications as engineers, and as such they are serving the Commission zealously and efficiently. The generation plants of the Commission are especially well-operated by them. When inspecting these plants, we have been much impressed with the outstanding character and ability of the Engineers in charge. The methods of accounting adopted by the Commission we believe to be adequate and proper both in respect to the manner in which the duties are apportioned and as regards the records kept. Certain improvements in the system now followed have been suggested by us. That the organization administered by the Commission is financially sound there is not the slightest doubt. The Commission has to a large degree a monopoly of something everyone wants. Any organization that has such a monopoly should have no difficulty in paying its way provided its method of administration is sound. To some of the practices of the Commission we take strong exception in our reports, and to these reports we refer Your Honour.

The things to which we have taken exception are nearly all matters of administration. But methods of administration can be reformed, and wrong methods can be righted. We mention now, some of the things which, in our opinion, have been wrong.

(a) There has been too great a tendency on the part of

the Commission to defer the time for refunding its obligations. There appears to us no reason why the time for contributions to sinking fund to meet the cost of construction should invariably be deferred for five years beyond the time provided in the Power Commission Act, whatever the demand for power may be.

(b) The expressed intention of the Commission to extend the time for contributions to the sinking fund in respect of the Queenston-Chippawa undertaking, to forty years, with a five-year deferment period is, we believe, absolutely wrong, and, we are advised, contrary to existing law. We regard it as unlikely that the Legislature in passing the Ontario-Niagara Development Acts intended to relieve the Niagara System from the provisions of the Power Commission Act, relating to contributions to sinking fund.

(c) The failure to provide a sinking fund for nearly all of the bonded indebtedness in respect to the Niagara developments, which are operated by the Commission as private companies, in the same general manner and to the same extent as is done in respect of cash advances under the Power Commission Acts, has been, in our opinion, unsound and unjustified.

(d) The principal estimates of cost of developments submitted by the Commission to the Government have in nearly all cases, been far too low. So wide has been the difference between the estimates and costs that the fact that the estimates should have been submitted as representing the probable cost of the works seems almost incredible.

(e) In 1922, the Commission took a large portion of its renewal fund, which at that time was in some cases too small, and applied it in payment of outstanding balances due to it by municipalities, and established new renewal rates for the future on a much lower basis. This depletion of the renewal reserve and the reduction in the rate by the Commission was, in our opinion, unjustifiable and unsound.

(f) We fully concur in the opinion expressed by our Consulting Engineer that the contingency funds of the Commission are, as a rule too low.

(g) The unauthorized use of $1,100,000 of the Funds of the Power Commission for radial railway purposes was wholly unjustifiable and the amount taken from these Funds should be restored without delay. (Report Cited, Volume II, pp. 219-221.)

In connection with the Queenston-Chippawa development, the Report makes the following general statements:

A primary mistake was made by the Commission in placing the management of the construction of this work in the hands of its engineers who had not had such a wide experience in works of great magnitude as would justify the Commission in leaving it in their hands. The work having got beyond the control of the Government, finally appears to have got beyond the control of the Commission itself and its engineers. (Report Cited, Volume II, p. 228.)

The Commission lacked throughout the steadying influence of financial responsibility. It got money almost for the asking, and it got it not only from the Government but by diverted millions which it held in Trust for other purposes. (Report Cited, Volume II, p. 229.)

If the estimate for the Queenston-Chippawa development instead of being submitted to outside engineers years after the work was begun, had been submitted to them in the first instance, the Government would have at once found out it was unsound and could not be relied upon. (Report Cited, Volume II, p. 229.)

We are forced to the conclusion that estimates were often submitted by the Commission, not so much with the view of enabling the Government or the municipalities concerned, to form clear ideas of what the cost of the undertaking might be, but with the view of obtaining for the Commission authority to proceed with the work. (Report Cited, Volume II, pp. 229-230.)

The success of the publicly owned and operated utility for supplying electrical power or energy to the people of

Ontario does not depend upon, but is rather hampered by, loose statements or estimates as to the actual or prospective cost of such electrical power or energy when such cost may be unduly enhanced by extravagant, unauthorized and unjustifiable cost of generating and transmission works. Nor is the cause of public ownership advanced by misleading statements in regard to the certainty as to the time within which and the extent to which municipal corporations which have entered or may hereafter enter into contracts with the Commission will acquire complete ownership of the works constructed or acquired for their benefit free from all encumbrances and in a condition approximately as good as new. In performing its function as administrator of a great public trust, the Commission ever should bear in mind that it was created by the Legislature, is financed by the Province, and its powers and authority are defined by the Statutes. (Report Cited, Volume II, p. 230.)

Our examination showed that for years past the annual payments made by the Commission to the Government as the cost of money, were considerably less than the actual cost of the money to the Government. (Report Cited, Volume II, pp. 232-233.)

So far, less than 2% of the advances made on account of the municipalities by the Province have been provided for by sinking funds at the present time. . . . The obligations incurred by the Government in respect of the undertakings amount to more than half the total Provincial debt. (Report Cited, Volume II, p. 236.)

The close correspondence between the general tenor of the Gregory Report as disclosed in these extracts and the general tenor of the foregoing pages is very remarkable. The Gregory Commission had the great advantage of ample evidence, an advantage which was not enjoyed by the writer. Yet in both cases and wholly independently the

same conclusions forced themselves as results of investigations.

The deficiencies of the Hydro were also partly disclosed in proceedings against a young man called Settell, who had been private secretary to Sir Adam Beck. This young man had taken $20,000 belonging to the Hydro and before absconding had written a letter to Sir Adam Beck. The young man was found guilty and was sent to jail, but the letter was not produced at the trial nor was it otherwise published. It became known, however, that this letter contained certain charges against Sir Adam Beck. A Commission was thereupon appointed by the Government to investigate these charges, although in accordance with the customary practice of enveloping Hydro affairs in mystery the letter was not published in the Report of the proceedings of the Commission. Some of the charges were no doubt of a frivolous character, but the proceedings of the Commission undoubtedly confirmed one of the conclusions of the Gregory Commission, viz., that the Commission had handled "the funds that came into its hands with incredible looseness."

The general conclusions are irresistible that the Hydro-Electric System of Ontario has been inexpertly managed from the beginning and that the aims of its management have been political and not economical in the strict sense. Indeed, the economical interests of the Province have been sacrificed

to the political ambition of a small number of municipal and provincial politicians. These politicians have led the Province into an expenditure which may yet turn out to be ruinous and have in doing so upset the political system of the Province. By means of cajolery and electioneering management not lacking in cunning, the Hydro Party has altered the political character of the Province, has inflicted a serious blow to spontaneous industrial action within it and has contributed towards driving industry and intelligent organization either into the Province of Quebec or across the line into the United States.

XIII

LABOR AND THE HYDRO

In May, 1919, two thousand employees of the Hydro-Electric Commission threatened to strike. A dispatch from Niagara Falls (*Globe*, May 24, 1919) said that if the strike took place "nearly all of Western Ontario would be plunged into darkness and many cities and towns would be deprived of power to run their factories." This was probably an exaggeration since most of the men who threatened to strike were working upon the then unfinished Chippawa Canal and their defection at that time could not have affected the supply of power. The Hydro Commission at first refused to accept a Board of Arbitration, although a scheme of arbitration in labor disputes had long before been adopted by the Dominion.[1] Afterwards the Commission agreed to the appointment of a Board. The Hydro enthusiasts immediately utilized this tardy acquiescence in a perfectly reasonable request for arbitration in the wages dispute. The Labor Mayor of Brantford (Ont.), for instance,

[1] The Act is known as the Lemieux Act.

urged that Sir Adam Beck call a general convention of manufacturers and Labor bodies in order to let the Ontario Government hear the people's views on Hydro matters. . . . Now that Sir Adam has given Labor the best conditions and terms of any organization in Canada, it is up to Labor to see that privately owned power companies are not given unfair advantage over the Hydro. Otherwise Labor will be defeating its own project. The Dominion Government also must be given to understand that it must keep hands off Ontario's power right on the St. Lawrence, and hand that development over to the Hydro. Anything else will be a gross injustice to the great work of Sir Adam Beck.[2]

In August, 1923, the Toronto Hydro Electric Commission, which is subordinate to the Ontario Hydro-Electric Power Commission, challenged the constitutionality of the Industrial Disputes Investigation Act of 1907 (a Dominion Act popularly known as the Lemieux Act). This Act provided for the appointment under the auspices of the Dominion Government of Boards of Arbitration for the settlement of industrial disputes. The pleas of the Toronto Hydro Commission were to the effect that the Commission had been created by the Provincial Government and that the Act which made it illegal to declare either a strike or a lockout until the dispute had been investigated by a Board appointed by the Dominion Government was an interference with the civil rights of individuals and corporations, these civil rights having been assigned in the British North America Act of 1867

[2] *The Globe*, Toronto, May 30, 1919.

to Provincial jurisdiction. A dispute having arisen between the Toronto Hydro Commissioners and its employees, a Board was appointed in terms of the Act. The Commissioners applied to the Courts for an injunction against the Dominion Board, and an interim injunction was granted by Mr. Justice Orde on August 23, 1923.

The Toronto Hydro Commissioners then attempted to have this injunction made permanent. The case was tried before Mr. Justice Mowat, in November, 1923. The counsel for the Dominion contended that the Act was *intra vires* under the general clause of the British North America Act of 1867, giving the Dominion Government the right to legislate for "the peace, order and good government of Canada." Mr. Justice Mowat refused the application of the Toronto Hydro Commissioners. The Commissioners appealed to the Ontario Court of Appeal, with the result that Mr. Justice Mowat's decision was sustained, there being only one dissenting appeal judge, Mr. Justice Hodgins. The Toronto Hydro Commissioners then appealed to the Judicial Committee of the Privy Council. The case was heard in London in November, 1924, and the judgment of the Committee was delivered by Viscount Haldane on January 20, 1925. This judgment reversed the decision of the Ontario Court of Appeal and declared the compulsory clauses of the Act to be outside the competence of the Dominion Parliament. Lord Haldane coincided with the minority judgment of Mr. Justice

Hodgins of the Ontario Court of Appeal in regarding the Act as primarily affecting property and civil rights and thus infringing Provincial rights.[3]

The decision means that if the Act continues to exist at all, as seems doubtful after this judgment, it must exist only as a voluntary Act instead of a compulsory Act as it was intended to be and as it was utilized for the settlement of industrial disputes with much success for eighteen years. In thus upsetting a piece of labor legislation useful alike to workmen, to employers, and to the public in preventing the continuance of prolonged and hopeless strikes, the Toronto Hydro has inflicted grave injury upon the interests of labor, as well as upon those of employers and of the public.

The employees of the Toronto Hydro are thus at its mercy until a law is passed by the Provincial Legislature compelling it to resort to arbitration in case of a dispute with its workmen. The control of the Legislature by the Provincial Hydro renders unlikely any such legislation and therefore the Hydro employees suffer from the arbitrary conduct which immunity from control is apt to engender in public bodies and has actually been engendered in a very special degree in the Ontario Hydro Electric Power Commission.

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[3] For the proceedings before the Privy Council, see copy issued by the Department of Labor, Ottawa, 1925. The text of the judgment is published in the *Labor Gazette,* Ottawa, February, 1925. See also pamphlet, "Government Intervention in Labor Disputes in Canada," Department af Labor, Ottawa, 1925, pp. 19-22.

XIV

CONCLUSION

The Ontario Hydro-Electric system is customarily erroneously represented as an experiment in "public ownership." It is really an attempt on the part of a small number of politicians to establish an industrial monopoly and to manage this monopoly in such a way as to keep themselves in power. In order to effect this object they have violated constitutional law and practice; they have assumed absolute authority; they have closed the courts of justice against proceedings adverse to themselves, and they have encroached upon the liberties of the people. These politicians by the use of the insidious methods described in the foregoing pages have hoodwinked the public into the belief that they are acting in the public interest and have cajoled the Legislature and the public into passing laws and by-laws on the strength of estimates which according to the Gregory Report were incredibly below the actual cost. They have saddled the Province with an enormous debt on account of a group of enterprises, the returns from which must be, in the nature of the case, of a fluctuating and speculative character. They have em-

barked upon a series of complicated industries for the management of which they have exhibited no aptitude and for which they have had none of the necessary training and experience. They have again according to the Gregory Report voted themselves large salaries for their incompetent labors. They have in many cases broken promises solemnly made. Instead of reducing the cost of power, there are signs that they must ere long increase that cost to the consumers. The temporarily low rates cannot be maintained or the enterprise must become insolvent. The eventual economic loss may be very considerable; but the political injury which they have already inflicted upon the public life of the Province is the most important fact adverse to their credit and to the credit of the people and the press who have placed their necks blindly under the yoke of the politicians.

In thrusting itself into the municipal and Provincial politics of Ontario, the Hydro drew to itself support from all parties and from many groups outside parties. There were no other political interests of moment so far as Provincial affairs were concerned at that time, and thus very soon after it embarked upon its expensive career the Hydro had succeeded in monopolizing the political interest of the Province and in effectually disposing of the two-party system by which Provincial governments had previously been placed in power and dismissed. The Hydro practically came into the Provincial

House as a third party which immediately swallowed the other two.

The advantage of the two-party system, especially in a single chambered Legislature, was that it provided for a constant criticism of the government and an effective check upon it. The keenest critics of the Government were those who had been displaced by it and who hoped to displace the Government in their turn. But not only is it the interest of no one in the Legislature to criticize the Hydro; it is the interest of everyone to shield the Hydro. The Provincial credit would be injured if the Hydro were even suspected; "the cause" of "public ownership" would be hurt if it were shown that the Hydro was a failure.

The Hydro is much larger than its promoters ever dreamed of; it is a great deal larger than they can manage. In point of fact, the Hydro cannot be controlled; it controls both its own officials and the Government.

Before the Revolution in China, and perhaps even yet, there might often be seen in the streets of Canton, for instance, a prisoner enduring the punishment of the *cangue*. This instrument of torture consists of two boards of wood, each about two inches thick and two feet wide. The boards when padlocked together embrace the neck of the prisoner in such a manner that he cannot remove his head from his formidable wooden collar nor can he rest with any comfort. He is free to walk

about the streets but is nevertheless imprisoned by his *cangue.* The four Prime Ministers of Ontario, since the invention of the Hydro, have each worn an instrument of torture similar to that which has been described. In the course of years the Hydro *cangue* has become heavier and heavier. Day and night its load is felt; none the less wearily that the public assumes to look upon it as useful and ornamental. To the wearer it has become an almost intolerable burden.

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